HINTS

ON THE

SETTLEMENT OF CLAIMS

FOR

LOSSES BY FIRE.

THE AVERAGE CLAUSE.

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LOSSES BY FIRE

UNDER

MERCANTILE POLICIES.

BY

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LONDON:

CHARLES & EDWIN LAYTON, 150, FLEET STREET.

1866.

LONDON:
PRINTED BY CHARLES AND EDWIN LAYTON,
FLEET STREET AND GOUGH SQUARE.

PREFACE.

THE numerous fires in mercantile warehouses which have lately taken place, have naturally given rise to multiplied discussions in the settlement of claims. The curiously interwoven combinations of our commercial system, are, no doubt, well calculated to originate on every hand questions having, at least, the aspect of novelty. The money advances—the powers of the holders of dock and wharf warrants over policies of assurance—the limitations and extensions of time for payment and delivery—the beginning and ending of responsibility between buyer and seller—are all fruitful sources of inquiries, partly legal, partly technical, the answers to which, however, involve the most important practical results.

In addition to the class of questions just referred to, and not now to be in any way dealt with, a very fair crop of curious and even subtle inquiries have recently arisen in reference to the operation of the modern Average Clause in the settlement of mercantile claims. By far the greater

part of these fortunately admitted of a comparatively easy solution, by appeals to the well-worn traditions of the past. Reverence for ancient and possibly unscientific usages, has not entirely died out, and it was found to be the prudent course for all concerned to rely upon well authenticated precedents for the rules of settlement.

There are, however, as is generally known, portions of the clause in present use, which have not had the advantage of being tested by age. The third section of the existing clause dates only from the year 1860, when that important addition, which has such a very marked effect on the settlement of claims, was first adopted and incorporated with the original clause.

The writer of the following brief essays, which first appeared in the *Assurance Magazine** under different dates, having had from length of experience, as well as from official position, the opportunity of taking a humble share in many of these discussions, has thought it might prove of some slight service to put on record for the benefit of the *new men* what has been done in the past time, and describe with as much brevity and clearness as could be attained, in what way the *old men* thought and acted in dealing with many of these entangled questions.

* Now known as *The Journal of the Institute of Actuaries.*

With this view, the writer proposed to himself to discuss formally the Average Clause as it at present stands, and lay down, as far as practicable, the acting rules for settlement under its provisions. Some progress was made in a brief treatise of this nature, but it was found, as the work advanced, quite necessary, in order to make the explanations intelligible, constantly to refer to the *history* of the clause and the various modifications it has undergone; so that it finally appeared to be at once the simplest as well as easiest method of treating the subject, to reprint the already written essays in the order of their original publication, and subjoin some few additional remarks, in order to bring the whole subject down to the present time.

It is only necessary to add, that no pretensions whatever are now put forward that the questions have been adequately treated. A great variety of cases of settlement of peculiar claims, and the reasons which governed the settlement, might, no doubt, be easily collected and added with advantage, but the writer has all along been under the impression that he might very easily write much more than others would have the courage to read on a somewhat dry and technical subject. It may, however, be stated with strict accuracy, that if the explanations here offered have no other merit, they may at least lay claim to the distinction of being the only printed matter on the subject to be anywhere found. It may be quite true that

the essays, as they stand, are of no great and permanent value but in the absence of any other public sources of information, they may *not improbably be* found to prove of some utility, and in any case serve a good purpose until something better and completer may be produced by a more competent hand.

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UNDER

MERCANTILE POLICIES.

JANUARY, 1853.

It is a point well worthy of observation, that while England has been for centuries past so eminently practical in every branch of commercial enterprise, there have been but few attempts made until lately, to examine freely the well-worn rules of insurance business with a view to alteration. There has prevailed a general, and not altogether unwise, determination to let well alone, and quietly continue the system, however faulty, which experience had shown could lead to an ultimate and satisfactory profit.

Our continental neighbours, however, and especially our friends the Germans, have in modern times set a better example, and the pages of this *Magazine* continually give striking proofs of the careful manner in which facts are now collected on every hand, and brought forward for the purpose of scientific inquiry in all branches of the business of insurance.

There are, as is well known, two great varieties of policies which are issued by Fire Insurance Companies, viz., the AVERAGE—or, as they are sometimes named, the FLOATING policies—and the SPECIFIED. The conditions of these two kinds are based upon widely different principles. The average policy has its own peculiar and distinctive characteristics, applicable to the largest mercantile transactions; and yet it is a remarkable fact that there does not exist any treatise for reference, or any embodiment of the laws by which such policies are practically regulated.

The settlements of claims for losses under average fire policies are often of a very complex and difficult character; and the general practical rules which govern these transactions are to be found only in the form of oral tradition, often forgotten, and still more frequently mistaken and misinterpreted. The fact that such vague guides have proved sufficient in these important affairs is testimony of a very striking kind to the generally honourable and equitable mercantile character of both assurers and assured.

In order to throw some light upon this most useful branch of fire insurance business, it may be worth while upon the present occasion to state concisely the existing practice, and the rules actually in operation, in reference to average policies, and at a future time to enter upon a brief critical examination of these rules, with a view to alteration and amendment. There may probably be but little novelty to many of our readers in these primary explanations; but they will at least serve to give a practical tendency to any future remarks that may be offered on this interesting subject.

It is quite necessary, in the first place, to fix the attention closely upon the broad and important distinction, already referred to, which exists in the settlement of losses

under average and specified policies. These different, and not unfrequently contending principles, although very clear and simple when stated and considered apart, become in some of the various combinations of policies, so strangely complicated, that a constant reference to first principles is needed in order to disentangle them.

The practice of assurance against loss by fire on moveable property took its rise in England at the commencement of the eighteenth century. The early contracts were issued by comparatively small bodies of speculators, who undertook to cover the risk of loss by fire as far as the total sum of a fixed and uniform policy, say of £500. The premium was paid by those who enrolled themselves in the shape of a stipulated quarterly subscription. There does not appear to have existed at the commencement any classification of risk analogous to that which is now in current use, in the shape of a scale of premiums graduated according to the risk. The subscribers were probably confined to the proprietors of ordinary dwellings and shops, while all buildings and trades of a more hazardous description were altogether excluded from the subscription.

The great peculiarity of these primitive policies, in undertaking to pay all loss that might happen within the fixed sum of the policy, irrespective of the amount of property actually at stake, or of any salvage that might be made, has, amidst many changes, descended to the present times, and stamped a peculiar character on our modern practice. The ordinary condition of the policies known as *specified* policies, is to pay all the assured's loss as far as the entire sum insured, however short that may have been of the value of the property under the protection of the policy. This rule consequently abandons the whole of the salvage as the property of the assured, the only question

involved under such policies being the production of adequate proof of the amount of actual loss.

The introduction of the average, or *pro ratâ*, condition is of more modern date. It is probable that this condition was introduced to meet the wants of the London merchants, who had then, as now, goods lying at the same time in different public warehouses, and on the quays, liable to sudden fluctuations and removals, which the owners sought to cover by what now pass under the title of average or floating policies.

The conditions of these policies are very dissimilar from those just described as *specified;* the average condition being that the Office or underwriter shall be liable only to such a share of the loss as the sum insured may have borne to the value of the whole property covered at the time of the fire. This rule makes the assured his own insurer for the excess of value beyond the amount of the policy, and obliges him to bear the loss in the same proportion. The rule has consequently the effect of dividing whatever salvage may be made between the two parties in the proportion of the risks they have respectively run.

This average condition, which is known to be the universal condition of the marine policies of all countries, is based on such clear principles of equity, that it can create no surprise to find that it has been generally introduced into the practice of fire insurance wherever the Offices were unfettered by the ancient forms. Over the whole continent of Europe—in France, Germany, and Russia—no fire policy is issued without that provision; while in the United States of America it also generally forms the basis of an insurance contract. The omission of it in any branch of insurance throws so great an advantage on the side of the assured in the settlement of claims, that it can

be viewed in no other light than as equivalent to a very great, though unascertained, reduction in the rate of premium.

The two principles which respectively govern the settlement of losses under specified and average policies are remarkably clear and distinct. There is but little danger of any misapprehension arising so long as the claims for loss have simply to be regulated by either form of policy upon its own individual rule. Under the specified policy, the claimant makes out his statement of loss, without reference to the value of the property covered; and, upon verification of the claim, receives the whole sum up to the full amount of the policy.

Under the average condition, the Office requires from the assured, in addition to the statement of his loss, a valuation of the entire property under the protection of the policy at the time of the fire, and receives only such a proportion of his loss as the one may relatively bear to the other. If the assured has failed to cover the whole risk, he is considered as being his own insurer for the excess, and in that character bears his proportion of loss, or, what is equivalent, puts forward his claim for salvage only in the same proportion.

In order to prevent all risk of misapprehension, we think it best to insert a copy of the average clause, to which are added copies of the French and German forms of the same condition.

"It is hereby declared and agreed, that in case of the property belonging to the insured in all the buildings, places, or limits herein described, shall, at the breaking out of any fire or fires, be collectively of greater value than the sum insured, then the Company shall pay and make good to the assured such a proportion only of the loss or damage as the sum insured shall bear to the whole value of the property aforesaid at the time when such fire or fires shall first

happen. But it is at the same time declared and agreed, that if the within-mentioned assured shall, at the time of any fire, be insured in this or any other Office on any specific parcel of goods, or on goods in any specific building or buildings, place or places, included in the terms of this insurance, this policy shall not extend to cover the same, excepting only as far as relates to any excess of value beyond the amount of such specified insurance or insurances, which said excess is declared to be under the protection of the policy, and subject to average aforesaid."

Our French and German neighbours have a much more concise, but not less clear statement of the same condition, as will be seen by the subjoined copies of their respective clauses.

" Si au moment d'incendie la valeur des objets couverts par la police est reconnue excéder le montant de l'assurance, l'assuré est considéré comme étant resté son propre assureur pour cet exédant, et il supporte en cette qualité sa part du dommage." *

" Wenn im Falle eines Feuers die versicherten Gegenstände mehr als die versicherte Summe betragen, und sie theilweise gerettet sind, so wird der Versicherte für so viel als sie mehr betragen, als *Selbst-Versicherer* angesehen, und trägt demnach seinen Antheil am Schaden pro ratâ." †

A first perusal of these different statements of the same principle will no doubt impress the reader greatly in favour of the concise and scientific expression of the French and German forms, contrasted with the somewhat diffuse and obscure phraseology of our own. Many of the chief difficulties which sometimes embarrass the subject are wholly removed, by reasoning on the sum left uninsured as though

* " If at the time of a fire the value of the objects covered by the policy is found to exceed the sum total of the insurance, the assured is considered as having remained his own insurer for that excess, and he is to bear in that character his proportion of the loss."

† " If in case of a fire the insured objects should exceed the sum insured, and they should be partly saved, the assured will be considered as self-insurer for the excess, and is to bear his share of the loss *pro ratâ*."

it were covered jointly with the Office by another Company or underwriter, that underwriter being the assured himself.

The expression of the condition might be varied, yet remain identically the same, by a declaration that the Offices and the assured were to partake of the salvage in the same proportion as the sums they respectively covered. The salvage when sold would equally diminish the loss, either in reducing its amount by previous deduction, or in making a subsequent *pro ratâ* division of the sum actually recovered from the fire.

The difficulties in the settlement of claims are in practice found to spring chiefly from the fact of the assured having effected policies of different kinds upon the same property, with different ranges of operation, and in various Offices. This may be done either through ignorance or with the design of gaining some supposed advantage, but is almost certain to produce great complication in case of loss. The mixed and often opposing liabilities of such policies give rise to cases in which it is exceedingly difficult, if not impossible, to find a really equitable principle of adjustment. The result has been, that some most arbitrary and oftentimes conflicting rules have been forced into daily use in the practical adjustment of losses. These rules have now to be considered.

The obvious simplicity and equity of the average principle would appear at the first view to leave but little room for difficulty or misapprehension. In the simple forms of such policies they are rarely found to give rise to any discussion between the Office and the assured. The obscurity arises at the time when the assured for any reason obtains policies from the same Office, or different Insurance Companies, having different ranges of operation, thus bringing such

policies into partial contact without the possibility of ever making them really concurrent.

One of the most common of these combinations is, where the assured has provided himself with a specified policy for the contents of a given warehouse, and afterwards taken out an average policy covering goods in that warehouse, and also in others named in that policy, the latter being subject to the condition of average.

This case being specially provided for by the second clause of the usual average clause, does not at the present moment call for any detailed inquiry. The rule acted upon by agreement in the settlement of losses is, that when a fire happens in the specified warehouse, the specified policy applying to that warehouse first enters into settlement, and bears the whole loss when that does not exceed the sum total insured. In cases where the sum of the specified policy is not equal to the loss, the average policy is brought forward in the second place, and pays its share of the residue of the loss in the proportion that the sum insured bears to the whole value of the goods covered in its range, after deducting the amount specially covered by the first policy.

Under the same policies, a loss happening in any other than the specified warehouse is settled by taking the entire value of goods under the protection of the floating policy, and allowing the amount of the specified policy to be deducted therefrom; the ordinary average calculation is to be made upon the remainder, and a *pro ratâ* share of the loss paid. It will not fail to be remarked, that while in the first case the specified policy is brought to bear all loss up to its full extent, in the second instance the amount of the specified policy is to be deducted from the total amount of goods covered. This is no doubt founded upon the consideration that such a portion was, by the operation of the

rule, not really at any time under the protection of the floating policy, and may equitably be deducted from the amount of property covered in the settlement of a loss.

The case of a mixed insurance on a specific parcel of goods in a warehouse named, and a floating policy on merchandise, is treated in identically the same manner. If the goods stated and declared are burned, the specified policy pays to its full extent, and the floating policy is brought in only for an average settlement in reference to the residue of the loss.

On the other hand, in case of a loss under the floating policy, all policies for identified parcels of goods, as well as the policies for specified warehouses, must be deducted from the estimate of goods covered, and the average calculations made upon the remainder after such deduction is made.

The next step in the inquiry leads to an examination of cases of much greater complication, and to difficulties which are not by any means so easy of solution.

The case of mixed specified and average policies having been provided for by a special clause, has not given rise to any practical difficulty, because all parties felt themselves bound in case of loss to submit to the stipulated condition. The injustice which the rule sometimes worked was rather between Office and Office than between the Office and assured, and little or no discussion has ever been provoked by the adoption of an admitted and declared rule.

It is, however, a matter of far greater complexity and embarrassment when two or more average policies covering merchandise in different ranges of warehouses, presenting as they generally do different proportionate liabilities, become united in the payment of a loss.

In order fully to appreciate the nature of the difficulty

now under consideration in its most general form, let us examine a case commonly found in practice.

A merchant takes out three policies. One, in Office S, for goods deposited at a wharf named; in Office P, for goods at the same wharf, or in the London Docks; in Office A, for goods lying in all or any warehouses in the Port of London, including in the range both the former.

It is clear, in the first place, that a loss happening at the wharf, all three Offices, S, P, A, have a joint but wholly disproportionate interest. In the second place, if the loss happen in the docks only, P and A are concerned in it, but with widely differing averages. Thirdly, if the loss arises in neither the wharf named, nor the docks, but in some other warehouse within the limits of the policy, the Office A is solely interested in the loss; and yet, if the assured is to obtain an equitable settlement of his claim, the policies of S and P cannot be altogether left out of the question, as they have each covered to a certain extent a portion of the goods included in the range of the policy of Office A.

No provision has ever been formally introduced into mercantile floating policies to meet this exigency, and settle the joint liabilities of such policies, covering different ranges, and consequently with very different bases for the settlement of claims. As cases have arisen, they have been met in an equitable, if not liberal, spirit in reference to the assured; while between the Offices interested, the practice has settled down into the adoption of the following rule:— That the policies with the most limited ranges should all be treated as specified policies in the order of their extent, and be called upon, in the first instance, in that order to make a settlement of the loss; while those of greater extent are only brought forward in the same order to cover any excess of loss which may be left after the prior settlement made by

those with lesser ranges. In a word, the floating policies of less extent or range are placed in the position of specified policies on parcels of goods, or goods in specified warehouses, as described in the second condition of the average clause, and are, in point of fact, to be treated in the same manner in the order of their extent—the policy with the least extensive range being held to be more specified than any of greater extent; and in this view all are to be brought forward in the order of the magnitude of their respective ranges, for the payment of losses.

With a view to explain the operation of the rule, one or two cases of a very ordinary kind are added, an analysis of which will serve as a key to the solution of almost every combination that may be suggested.

The assured has goods lying at the following places: viz., at a specified wharf,—at the London Docks,—and in the public warehouses generally, situated within five miles of the Royal Exchange. He has opened policies to cover the risk in the following manner: In Office S £2,000, limited to goods on the wharf specified; in Office P 1,000, covering goods at the same wharf, and also in the London Docks; in Office A £3,000, as a floating policy to cover goods lying within five miles of the Exchange of London. The merchandise owned by the assured is distributed as follows: £4,000 at the wharf; £1,000 in the docks; and £2,000 in the public warehouses generally.

A loss may happen in any one of the three places, and give rise to three perfectly distinct calculations.

Case 1.—Loss on goods at the wharf.

	Property.	Loss.	Insured in S.
Wharf	£4,000	£3,000	£2,000

S pays one-half, or £1,500.

	Property.		
Wharf and docks . .	£5,000		
Deduct insured in S . .	2,000		
	£3,000	Residue of Loss. £1,500	Insured in P. £1,000

P pays one-third of residue of loss, or £500.

	Property.		
Wharf, docks, and other warehouses	£7,000		
Deduct insurances in S and P	3,000		
	£4,000	Residue of Loss. £1,000	Insured in A. £3,000

A pays three-fourths of residue of loss, or £750.

Thus the Offices S, P, and A pay conjointly under their separate liabilities £2,750, and the assured loses by short insurance £250.

Case 2.—Where, with the same policies and distribution of property, the loss happens in the docks.

	Property.		
Wharfs and docks . .	£5,000		
Deduct wharf insurance in S.	2,000		
	£3,000	Loss in Docks. £600	Insured in P. £1,000

P pays one-third of loss, or £200.

	Property.		
Wharfs, docks, and warehouses	£7,000		
Deduct insurances in S and P.	3,000		
	£4,000	Residue of Loss. £400	Insured by General Floater in A. £3,000

A pays three-fourths of residue of loss, or £300.

Thus P and A pay together £500, and the assured loses by short insurance £100.

Case 3 happens when, with property and insurances the same as previously supposed, the loss occurs in a public warehouse to which the floating policy of Office A only applies.

	Property.		
Wharfs, docks, and warehouses	£7,000		
Deduct insurances in S and P.	3,000		
	£4,000	Loss in a Public Warehouse. £2,000	Insured in A. £3,000

A pays three-fourths of loss, or £1,500,

the assured losing by short insurance £500.

An attentive consideration of these cases, which may arise out of one set of policies, will furnish a very clear idea of the nature of the embarrassments which sometimes arise in the settlement of this class of claims, and point out also the methods actually in practice for adjusting them. It is particularly desirable to direct attention to the deduction of the sums of the policies of the lesser ranges from the total amount of property covered when the claim is made under policies of an extent greater than their own. This point of practice is open to some very weighty objections, and may call for future notice; but at the present moment it is sufficient to say that the rule as explained is generally adopted and acted upon in the settlement of average claims.

As no benefit whatever is likely to arise from multiplying examples to illustrate the same point, it may be interesting to quote a very remarkable settlement of the kind, now under consideration, which not long since took place at Liverpool, and in which, after close inquiry, the rule as stated was adopted by all parties as the basis of settlement.

Settlement of Messrs. A and B's Claim for Loss by Fire on 346 *Bales of Bowed Cotton, lying in Haywood's & M'Vicar's Shed, William Street, Liverpool.*

	£	s.	d.
Total loss, per invoice lodged with the Royal Assurance Company, cash, 9 November, 1849 .	2,794	3	0

Total property, per declaration . £374,996
Specific insurances . . . 90,000
Leaving to be covered by certified floaters . . . . . ——— 284,996 0 0

Of this sum there is declared to be in the Albert Dock warehouses only . . . £21,750 0 0

The "first average" will therefore be upon policies *that do not extend to the Albert Docks.* Thus—

£285,000 stock in certified warehouses and Albert Docks.
21,750 stock in Albert Docks.

			£	s.	d.
£263,250 : £65,000 :: £2,794. 3s.	=		689	18	4

Of this—

Liverpool	on 30,000	pays	318	8	5
Imperial	„ 10,000	„	106	2	10
Alliance	„ 5,000	„	53	1	5
West of England..	„ 5,000	„	53	1	5
Guardian	„ 5,000	„	53	1	5
North of England .	„ 5,000	„	53	1	5
Phœnix	„ 5,000	„	53	1	5
	£65,000		£689	18	4

The "second average" will then be upon policies including Albert Docks and certified warehouses. Thus—

£285,000 stock in certified warehouses and Albert Docks.
Less 65,000 of first average policies.

			£	s.	d.			
£220,000 : £115,000 :: £2,104. 4s. 8d.						=	1,099	18 10
Of this—	£		£	s.	d.			
Liverpool.....	on 10,000	pays	95	12	11			
Alliance	„ 35,000	„	334	15	3			
West of England...	„ 25,000	„	239	2	5			
Guardian.....	„ 15,000	„	143	9	6			
North of England..	„ 5,000	„	47	16	5			
Phœnix	„ 5,000	„	47	16	6			
Atlas	„ 5,000	„	47	16	5			
		Carried forward				.	1,789	17 2

				£	s.	d.
		Brought forward	.	1,789	17	2
Sun	on 5,000	pays	47 16 6			
Yorkshire	„ 5,000	„	47 16 5			
Globe	„ 5,000	„	47 16 6			
	£115,000		£1,099 18 10			

The "third average" will then be upon policies including Albert Dock warehouses, transit-sheds, Birkenhead Docks, and all certified warehouses. Thus—

£285,000 in all such places.
Less 180,000 first and second averages.

£105,000 : £60,000 : : £1,004. 5*s.* 10*d.* = 573 17 8
The Royal paying the whole.

The "fourth average" will then be upon general floating policies. Thus—

£285,000 in all warehouses.
Less 240,000 first, second, and third average policies.

£45,000 : £10,000 : : £430. 8*s.* 2*d.* = 95 12 9

Of this—	£	£	s.	d.			
Alliance	on 5,000	pays	47	16	4		
Phœnix	„ 5,000	„	47	16	4		
	£10,000		£95	12	8		
Uninsured . .	£35,000	loses	.	.	.	334	15 5
						£2,794	3 0

RECAPITULATION.

Liverpool.....	under	first	average,	pays	318	8	5			
	„	second	„	„	95	12	11			
								414	1	4
Imperial	„	first	„	„	.....			106	2	10
Alliance	„	„	„	„	53	1	5			
	„	second	„	„	334	15	3			
	„	fourth	„	„	47	16	4			
								435	13	0
			Carried forward		.			955	17	2

					£	s.	d.
			Brought forward	.	955	17	2
West of England, under	first	average, pays	53	1 5			
„	second	„ „	239	2 5			
					292	3	10
Guardian..... „	first	„ „	53	1 5			
„	second	„ „	143	9 6			
					196	10	11
North of England „	first	„ „	53	1 5			
„	second	„ „	47	16 5			
					100	17	10
Phœnix ..... „	first	„ „	53	1 5			
„	second	„ „	47	16 6			
„	fourth	„ „	47	16 5			
					148	14	4
Atlas ..... „	second	„ „	.....		47	16	5
Sun ..... „	„	„ „	.....		47	16	6
Yorkshire .... „	„	„ „	.....		47	16	5
Globe ..... „	„	„ „	.....		47	16	6
Royal ..... „	third	„ „	.....		573	17	8
Uninsured					334	15	5
					£2,794	3	0

It will not now be necessary to add anything for the purpose of explaining the existing practice. The merits and defects of these methods of settlement may be brought under review at a future opportunity.

April, 1857.

It was intended that the short essay descriptive of the existing system of settlements of claims under average fire policies, which appeared in this *Journal* as far back as January, 1853, should have been promptly followed by some remarks on the most obvious defects of the system, with a few practical suggestions for their remedy. It is not necessary to explain here the reasons for the delay which

has taken place in the fulfilment of that intention; but it is satisfactory to know that the postponement has not been without its use. Many valuable hints have been offered; and although some marked differences of opinion exist as to any proposed remedies, the explanations given of the existing rules are, without any exception, admitted to be correct.

The examples of some remarkably involved claims and their ultimate settlement, which were given in the former article, have been thought serviceable; and suggestions have been made that a considerable number and variety of similar cases of actual settlements should be collected and published, in order that these important precedents may be generally known. It does not, of course, follow, that any previous decisions should come with such a weight of authority as to preclude a fresh discussion on many of these doubtful points; but in the absence of any fixed or acknowledged law it is unquestionably of some value to know what judgments have been already formed by those who have applied their minds to the difficulties of the subject.

However useful such a registration of decided cases might be, the present opportunity is clearly not the one in which it should be attempted. Such an enumeration, to be of any use, would be far too long for the limits of an article. In addition to the statement of the Liverpool complicated case already given, it may be of some use to refer to a not less remarkable London one, which gave rise to some very grave and important practical inquiries. The decisions upon the case now quoted are likely to assume, for a long time to come, the character of precedents.

On the night of the 6th October, 1849, the warehouse of Messrs. Gooch & Cousens, wool warehousemen, situate in London Wall, was burned down. The warehouse was

a very large one, devoted exclusively to the storing of wool, and held, at the time of the fire, not less than 3,606 bales of wool. The fire spread to every part of the building, and in the morning there appeared to the spectators to be nothing left but a blackened heap of worthless ashes. A little investigation, however, showed that underneath these unsightly remains lay, as the result proved, a very considerable value of salvage. No efforts were spared to remove and prepare for sale the damaged, but not destroyed, merchandise, and an unexpectedly large amount of salvage to be brought to account was realized.

The variety and number of interests involved in this large property gave rise, as might be expected, to very important discussions, and brought to the test almost every known principle and form of settlement. There were, as stated, 3,606 bales of wool. No less than 73 owners appeared. Some were owners in their own right, and others simply as factors and agents. Some portions were insured by specified, others by average, policies, of every variety. Others, again, were wholly uninsured. Some of the proprietors, by themselves or by their agents, had already put in their claim to portions of the salvage, being able, by the trade marks or otherwise, to identify those portions. With the exception of these, the whole body of owners were entitled to a *pro ratâ* share of salvage, whether insured or not. To add to the complication, many cases appeared where the expiration of the days of prompt—or the partial payment for goods sold, but not finally transferred, and other similar transactions—made the legal ownership in these cases, to say the least, very doubtful. But, happily, the whole of these settlements, being entered upon in a fair spirit of commercial equity, were promptly and satisfactorily arranged.

The accounts were exceedingly numerous, embracing distinct reckonings between many parties standing in entirely different relations to each other. For example: settlements mutually between the Offices themselves, as well as between the Offices and the assured. Then, again, the salvage had to be divided among the whole number of owners, whether insured or not—distinct accounts being kept for those proprietors who had been able to identify their own goods amidst the ruins.

The general result was as follows:—Contents of warehouse, 3,606 bales of wool, value £70,339. There were 73 owners who established claims. 731 bales (some of the most costly kinds of wool) were identified. The identified salvage sold for £13,068; the unidentified, for £13,906—thus yielding the large net salvage of £26,974, or about 37 per cent. on the gross value.

The records of these transactions will long continue to be of use for the purposes of reference. Many important points of practice were brought forward for discussion among the parties, having such a variety of interests in the damaged goods. There are but two of these points to which it is necessary to allude in this place. The principle laid down, that average policies should be brought forward for settlement in the order of their extent, was throughout universally admitted and acted on. The whole of the Offices, without any exception, held themselves bound by it, not only in reference to the assured, but also as between each other, and this was done in many cases where the strongest motives of interest existed for disputing the rule.

A not less important law was, in addition, laid down to regulate the settlements. The warehouse-keeper's book, in all cases, was taken as the test of ownership. Although

many transactions in the nature of partial transfer had taken place, which might have thrown legal doubt as to the parties in whom the actual interest was, at the moment of the fire, vested, the entries in the warehouse-book were, by common consent, taken as decisive on the point. The claims upon the offices and the divisions of salvage were all made upon this simple and impartial rule. The early adoption of this equitable law fortunately prevented many differences of opinion, which, had they been argued upon strictly legal and technical grounds, could only have ended in the most expensive and protracted litigation.

The reference to this case will complete all that is now to be said in the way of explaining the existing practice of settlement of average claims. Enough has probably been done to form the basis of the proposed inquiry as to the merits or demerits of the existing system. But before entering upon those critical remarks, it is thought advisable to comply with some suggestions which have been made, and very briefly advert to one or two peculiar cases of an analogous kind, occurring in the settlement of claims under specified policies, where the average clause is not in operation.

It is a case of very common occurrence, that buildings or goods jointly insured by specified policies in different Offices are found to differ in their limitations. Owing to the carelessness of agents on the one hand, and of the assured on the other, the most important variations of description are sometimes permitted to pass undetected. At one time, it is found, upon a loss occurring, that where two buildings communicate, there is a sum insured in one Office on one of those buildings, while an additional sum is covered by another Office extending over the two build*ings, without* an amount being specified on each. At

another time, a policy for stock is covered in one Office; for stock and goods in trust, in a second; and for stock, goods in trust, and fixtures, in a third: thus making each policy different in its range, in reference to each other, and entitled to be settled upon quite separate conditions as between the respective Offices and the assured.

A great variety of these most unfortunate sources of difficulty might be referred to; but the practice of adjusting claims as between the Offices thus brought, by oversight, into apparent collision, has settled down into a rule which can be better described by example than strictly defined by a few explanatory phrases. The principle, however, may be stated thus:—The Office with the widest range, or the greatest number of items included in one undivided sum, is held to be liable for the whole amount of its policy upon any one. The office with a less number of items is equally liable for its whole sum upon each within its range. A partial loss happening upon one of the enumerated items, common to both Offices, each Office is held liable to pay in proportion to the total amount of their respective policies, as though such a divergence did not exist.

To make the statement clear, let us take the simplest form in which such a variation can happen. Building No. 1 is insured in Office S, for £500. There is, subsequently to the issue of the policy, another building erected, in direct communication with the first—say, No. 2. An insurance is then made in Office P, covering both Nos. 1 and 2, for £1,000, but without any division of amount. A loss of £300 happens to No. 1. How is this to be settled? The Office S is obviously liable for its whole amount, £500. The Office P, although extending to a wider range, is also equally *liable for its* whole amount, or £1,000. The total

sums of each are therefore taken as the rule of proportion. Office S pays one-third of loss, £100. Office P, two-thirds, £200—just as though its policy was limited, in the same manner as that of Office S, to Building No. 1. No account is taken or deduction made for the fact that P had really covered a greater range of building than S, and that P would have been liable up to the amount of its policy for any loss on No. 2, while in that case S would have been an unconcerned spectator.

It is quite clear that this rule is not free from objections; and it can be no matter of surprise that the settlement of such claims has often given rise to keen argumentative discussions, in which the apparent injustice done to the Office having the widest range formed a prominent topic. Upon one of these occasions, a case that had arisen was submitted for the arbitration and opinion of the late highly esteemed Mr. Richter, of the Phœnix Office; and there is no one who had the opportunity of estimating the experience and intelligence of that gentleman, who will not (without, at the same time, altogether yielding his own right of judgment) be disposed to treat his deliberate opinion with respect. The following is the form in which the case was put before the arbitrator:—

Example.

	Insured in Office A.	Insured in Office B.	Insured in Office C.	Loss.
	£	£	£	£
On the dwelling-house	100	..	..	250
			200	
On the warehouse ...	..	100	..	100

Mr. Richter's decision was in the following terms:—

"To determine in what proportions the above loss is to be borne by the three Offices, it is necessary to ascertain what would have been the liability of each, separately, if the others had not been concerned.

"The liability of the Offices A and B is distinct, and needs no comment.

"The liability of the Office C is to the amount of £200 on each building, but conditioned not to exceed £200 upon the whole.

"That the above is the true interpretation of that policy appears clear: for

"If a loss of £200 occurred on the dwelling-house; or
If a loss of £200 occurred on the warehouse; or
If a loss of £200 occurred in the two buildings, in whatever proportions; in either case, that policy would have covered the loss.

"If, then, the policy in Office C is an insurance of £200 on each building (conditioned as above), that Office must, in the example above stated, bear a share of any loss on each building in the proportion of two thirds to one third; with the reservation, that such apportionment shall not infringe upon the condition of not paying more than £200 in the whole.

"Upon the first view of the following settlement, it appears unreasonable that the sum insured by the Office C should be twice taken into the account. But the hardship results, not from this settlement, but from the inherent defect of the policy itself, by which two risks have been incurred for one premium."

Settlement.

	Proportions.		
	Office A.	Office B.	Office C.
	£ s. d.	£ s. d.	£ s. d.
Loss on the dwelling-house, £250	1/3—83 6 8	..	2/3—166 13 4
Loss on the warehouse, £100.....	..	1/3—33 6 8	2/3— 66 13 4
But this division would violate the condition in the policy of the Office C, which limits its payment, in any case, to £200: the surplus must, therefore,			233 6 8
be deducted, say.....	..	..	33 6 8
And as the assured must be no sufferer upon either building so long as any part of his specific insurances upon them remains unpaid, these specific insurances must be charged with the above excess.....	16 13 4	16 13 4	
	£100 0 0	£50 0 0	£200 0 0

The insurances on goods by policies with variations of an analogous kind often give rise to similar and not less intricate discussions. In Office A is insured £1,000 on stock; in Office G, £3,000 on stock and goods in trust. A loss happens of £800 on stock. In this case also, both

policies being applicable in their full amounts for the loss, A is to pay one fourth (say £200) and G three fourths (or £600).

Any loss on goods in trust alone would be covered solely by Office G; and in case of a mixed loss on both stock and goods in trust, G would first settle for goods in trust, and then apply the residue of its policy to pay, *pro ratâ* with Office A, for the loss on stock.

It must, however, be stated, that this rule of settlement has not invariably been carried out to its fullest extent. Cases are on record where the specific insurance of certain articles as part of the general stock has, after friendly arbitration among the Offices interested, been held to admit of another interpretation. These cases may be considered as exceptional, and not to affect the general rule.

As before stated, the principle appears, on the first view, to be wanting in equity, and not capable of universal application. The best defence that can be made for it is, that no better rule has yet been found. There is no intention of discussing it here at any length; but amidst many earnest inquiries, and not a few attempts (some of them not lacking the merit of ingenuity) to introduce an improved general rule, there has none yet been discovered which has sufficient recommendations of practical simplicity to gain much attention. The difficulties arising from such defective policies ought to operate as a very strong motive, on both assurers and assured, to spare no pains in seeing that joint insurances are made really concurrent in all their details—a simple point, but one of the highest value in conducting the business of an Insurance Company.

The subject of the settlement of claims under average policies is that which now demands our exclusive attention. Among many objections of more or less weight, which may

Docks: which of these two policies has the widest range, and how is the loss to be settled? A merchant takes out a policy for merchandise in the Legal Quays, Lower Thames Street, and the up-town warehouses, late in tenure of the East India Company; and subsequently another, in a different Office, for the Legal Quays and London Docks. A loss happens on the quays: which of the two policies is to have the honour of precedence in paying the loss, on the ground of narrowest or widest range? In short, how is any acknowledged rule to be applied, in order to make even an approximation to a satisfactory settlement?

There is no use in being tediously minute in giving cases to illustrate where the existing rule is often found to be defective. The minds of all those to whom these suggestions are at all likely to be of service, will supply them without limit as to number. It is now time to state succinctly the alteration in practice which is proposed as an amendment on the present mode of settlement.

The simple proposal then is, to introduce generally into all average policies, and steadily act upon, what is understood by the *independent liability* clause—a principle which abolishes, in the case of floating policies, any priority of settlement on the ground of a greater or less range or extent of space covered by the terms of the policy, but makes the actual liability of the policy, independently estimated upon the average principle, the measure of the proportion which the Office has to contribute to the loss.

A clear definition of what is intended by the term *liability* is needed at this point, in order that the full effect of the proposed alteration upon the settlement of claims should be properly estimated. It is simply that amount which any policy is legally liable to pay, under its own peculiar conditions, of any given loss. In the case of a

specified policy, the liability is the actual amount of loss, when not beyond the sum insured. With average policies, the liability is the proportion of the loss to be paid after the average condition has been brought into operation, and the estimate made of the ratio which the sum assured bore to the value of the property covered. The *independent liability* spoken of is therefore nothing more, in the case both of specified and average policies, than the amount of loss which each would be liable to pay on any given occasion, if no other policy than itself existed. This individual and distinct liability gives room for no doubt where one policy only exists, and can obviously be estimated equally as clearly in the case of any number of policies applying to the same risk, however diversified in their character by any possible variety of limits or combinations.

The suggested improvement, then, is, that on all occasions where more than one policy is applicable to an individual risk, that each should ascertain its own liability for the loss, quite independently of the other, and from these united liabilities ascertain the proportion of loss to be paid by each. For example: there may be a specified insurance on merchandise in a warehouse—say, £1,000. An average policy in another Office, for £1,000, may touch the same warehouse. A loss of £1,000 happens. The specified policy is liable for the whole amount; but it is also found that the average one would be also liable, under its conditions, if no other policy existed, for £500. By the present rule, the specified policy would pay all the loss, and the average one wholly escape. By the rule proposed for adoption, the two policies would be equitably called upon to pay in proportion to their clearly ascertained liabilities—the specified, two thirds; the average, one third, of the loss.

This idea of settling in the ratio of liabilities of policies ascertained independently, thus disconnecting the policies from any mutual dependence or priority of settlement, is not by any means a novelty. The principle has been already adopted in one branch of mercantile business; and it forms part, at this day, of the policy of every Company accepting floating insurances at Liverpool. It had its origin on the following occasion:—

The year 1842 was a year memorable in Fire Office history as a period of almost unexampled calamities. In the month of May occurred the great fire in Hamburg, followed, later in the year, by several very destructive conflagrations in Liverpool. The settlements in the latter city originated some discussions, and the question of priority of settlement received a very complete investigation. With the view of in some measure enabling the different Companies to limit the sums covered in the different warehouse districts of that city, the town was divided into three sections, and it was proposed that floating policies should be limited to each of these defined portions, and not extend upon any account beyond; so that a separate policy and a separate estimate of his property, on the part of the assured, was needed for covering the merchandise in the range of each district. These regulations gave rise, as might have been anticipated, to considerable difficulties in carrying them into practical effect. Great differences of opinion arose as to the form and extent of the districts themselves. Different districts were adopted by different Companies; and when it is considered that the traditionary law, that the policy with the smaller limit should make priority of payment, was still held to be binding, the difficulty, not to say impossibility, of making any satisfactory settlement, may very readily be conceived.

This state of affairs could not be expected to continue; and early in the year 1843 many of the London Companies, who were united in opinion as to the district divisions, agreed to introduce an additional clause in the conditions of average, establishing the principle of what has since been known under the title of *independent liability*. This clause still continues to form part of the conditions of average in all policies covering the most extensive range of floating policies in the port of Liverpool. It is not, however, yet introduced or acted upon in any other mercantile town.*

The additional clause referred to is as follows, and was simply joined to the two clauses which, up to that date, constituted the conditions of average:—

"And it is further declared and agreed, that if the assured shall at the time of any fire be insured in this or any other Office by any other average policy applying to property deposited in all or any of the buildings or places included in the terms of this insurance, and also in other buildings, places, vessels, or craft, not included in the terms of this insurance, then this Company will bear its share of the loss actually sustained by the assured, in the proportion that the amount of *its liability* (ascertained by the average principle aforesaid) may bear to the amount of the liability of such other average policy independently ascertained in the same manner, anything expressed or contained therein to the contrary notwithstanding."

The true character and effect of this additional clause was explained in detail by one of the leading Companies, in the instructions forwarded to its agents, which were printed and circulated at the time, for the purpose of general information. The following extract from that paper (which proceeded from the pen of the present writer) will greatly assist in throwing light upon this point of our present inquiry:—

* This distinction ceased to exist in 1860 by the adoption of the New Clause, which is now in use everywhere and for policies of all ranges.

"The directors have therefore resolved to alter the average clause at present in use, to the form annexed, which abolishes, in the case of floating policies, any priority of settlement, on the ground of a greater or less range or extent of space covered by the terms of the policy, but makes the actual liability of the policy, independently estimated upon the average principle, the measure of the proportion which the Office has to contribute to the loss.

"By the general adoption of this rule the settlement of average losses will be greatly simplified, and apparently put beyond the power of dispute, whatever may be the difference of ranges included in the terms of the policies. In the cases where any number of policies covering the same range are interested, the settlement will be in no respect different from the existing practice; that is, each Office will estimate its liability on the ordinary average principle, and each contribute to the loss in proportion to such ascertained liability. And in cases of greater and less ranges of districts, the settlement will proceed in the same manner. Each Office will independently ascertain the actual amount of its own liability, depending as usual on the amount of goods covered in the special range of its policy: and when these respective liabilities are ascertained and found not to exceed the amount of loss, they will be paid in full to the assured; and when they do exceed the loss, each will pay only its proportion.

"One or two examples may make the principle clear.

"Office A insures £10,000 in warehouses, Office B insures £10,000 in warehouses and ships. Property at the time of the fire, £15,000 in warehouses and £5,000 in ships. Loss, £6,000 in warehouses.

	£
The liability of A is as £10,000 is to £15,000; that is, two thirds of loss .	4,000
The liability of B is as £10,000 is to £20,000; that is, one half of loss .	3,000
Making the joint liabilities .	£7,000

"Here the joint liabilities of the two Offices exceed the loss, and each will pay in the proportion of its separate liability.

	£	s.	d.
Office A pays four-sevenths of loss .	3,428	11	4
Office B pays three-sevenths of loss	2,571	8	8
Loss . . .	£6,000	0	0

"Take the same insurances and distribution of property, and suppose the loss to happen in the ships to which the policy of Office A does not extend: the case then stands:—

Insurances.	Property.	Loss.
£	£	£
Office A, 10,000 in warehouses.	15,000 in warehouses.	
Office B, 10,000 in warehouses and ships.	5,000 in ships.	5,000 in ships.
£20,000	£20,000	

"In this case Office B ascertains its own liability, which is as £10,000 is to £20,000, or one half; and B is therefore liable to only one half of the loss, or £2,500.

"You will specially observe, that in the last case the assured will obtain only one-half his loss, although apparently covered for the whole amount of the property. But it is obvious, that in consequence of the partial

application of one of his policies, he is not properly—that that is say, adequately—insured; and the Office B is fully justified in acting on the average condition of its policy, and including the whole amount of property covered within the range of the insurance, without at all entering into the question as to the existence of any policies based upon a different range, and which have no liability in the place where the loss happened.

"This and many similar cases which may be easily found, are strong reasons for the assured making all his policies in the different Companies upon the same principle and with the same limits, for in that case the difficulty pointed out could not happen; and it will be a part of your duty distinctly to call the attention of the assured to that fact, in order that no disappointment may be experienced when this, or any other Office, may take its stand on the principle of computing its own liability independently of that of any other Office or Offices, never in any case paying any sum exceeding that liability ascertained on the principles of the *pro ratâ*, or average condition of the policy."

It is not to be denied, that while, by the general adoption of the proposed principle of independent settlement, much of the obscurity and not a little of the injustice of the old system would be removed, it would present insurmountable obstacles to the issue of policies in the involved and complicated forms in which they are now commonly accepted. It is quite certain that a very considerable change of practice must follow. A merchant will not dare to take out a specified policy for one warehouse, and another, of a wider extent, to cover that and other warehouses; for while the average policy would be called upon for a share of the loss in the specified ware-

house, it could not allow, in the case of a loss elsewhere, that the sum insured specifically should be deducted from the estimated amount of property covered. These cases will present themselves in great variety to the minds of all who have a practical knowledge of the subject; and a very natural inquiry will follow, as to the effect the alteration may have on the course of mercantile insurances.

The first effect will doubtless be, a very general simplification of all floating policies. The variety of ranges covered by individual owners will cease. In order to be properly insured, the merchant must take out but one kind of policy—or at least, must not permit the different ranges of average policies to interfere with each other. He cannot make an insurance first of all upon a specified warehouse, and then include that and others in an average one; but he can cover all, effectually and simply, by one or more average policies of the same limits and conditions. Policies for the docks, and then others to cover the dock warehouses and all within five miles of the Royal Exchange, will not be asked for; but policies for the docks and then others of the wider range, excepting the docks, will be the simple and improved form of issue. The two classes or ranges will, in short, be kept quite distinct, and not allowed to interfere with each other and complicate the settlement of claims.

The alteration in the form of the average conditions would be not the least valuable part of the suggested improvement. A simplified statement of the average principle, followed by a clause declaring the independent liability of the policy, in case of any joint insurances, would be all that is necessary, and would be found, moreover, to clear away much of the obscurity which hangs over the present form. A merchant inquiring for inform-

ation as to the best methods of meeting the necessities of his particular branch of trade, would comprehend at a glance the effect of the proposed principles of settlement; while to give a stranger, not quite familiar with the subject, any clear idea of our present methods of dealing with claims under average policies, is known to be a task of no ordinary difficulty.

The clause proposed to compass the intended alteration would stand in the following form, probably admitting, after reflection, of further abridgment and improvement:

"It is hereby declared and agreed that this Company shall be liable only for such a proportion of any loss as the sum insured by this policy may bear to the full value of the property covered.

"And it is further declared and agreed, that if the assured shall be also insured by any other Company on property wholly or partially covered by this policy, then this Company will bear its share of the loss in the proportion that the amount of its liability may bear to the amount of the liability of any other policy or policies separately ascertained."

Having now submitted the topic for consideration to those who may feel interested in its discussion, it is left without further comment or recommendation: with the full conviction, however, in the mind of the writer, that no practical difficulties lie in the way of making the change, that ought to weigh, for a moment, against the many advantages which would certainly result from its adoption.

OCTOBER, 1858.

Since the last article on the settlement of fire-claims under average policies appeared (April, 1857), a very important change has been adopted. The third clause of the

Liverpool floating policies, known under the title of the "*Independent Liability Clause*," has been introduced, by the common consent of nearly all the Insurance Companies, and made part of the conditions of all London mercantile floating policies. The alteration is, beyond all doubt, a very considerable one in its practical effect. It will change entirely the mutual relation of the Companies in very many cases of joint insurances, and, if very great care be not taken at the outset, introduce no small share of doubt and difficulty in the relation of the Offices with the assured. It may, therefore, be worth while to offer a few remarks at the present moment on the change actually effected by the recent alteration of the average clause, and then make some practical suggestions as to the regulation of claims under the altered form of policy.

The first, and by far the most important point to be noted, is, that the old empirical and unjust system fixing the policy of smaller range with priority of settlement, ceases its operation; so far, at least, as London mercantile insurances are concerned. A more just and intelligent rule is substituted. All average policies covering, at any point, the same risk, are to be called to take their share in settlement and pay their proportion according to their ascertained liabilities. In a very short time it will be a matter of curiosity and wonder to reflect upon the strange character of the old rule, which has prevailed and been quietly submitted to for so long a period. In any case, no one will be found of the opinion that the change recently made has been either a hasty or a premature measure.

The satisfaction derived from the contemplation of this judicious and necessary regulation is very considerably modified by the conviction of its incompleteness. There is so much left untouched, that future, and probably not

distant legislation will be urgently required. For example: the rule of calling upon specified policies to settle first, and which is still maintained in the second clause of the present average condition, is open to identically the same objections as in the case of limited averages. Why should a specified policy be called upon often to pay the whole loss, while an average policy, covering also the same goods, escapes? No better reason can be given for this portion of the old rule than for that which has been abandoned by general consent. The rule probably had its origin in the purpose of regulating losses where different kinds of policies existed in the same Office. This has been taken up and misapplied in the cases where such varied forms of policies exist in *different* Companies. The universal condition of specified policies is, that in case an insurance on the same property should be made in another Office, then each Office should bear its proportion of the loss. Upon what principle is it that the Company issuing an average policy inserts a clause declaring that the specified policy is bound to settle first, and abandon its own condition of paying only *pro ratâ*—thus furnishing the spectacle of one Office practically annulling, by its own act, the conditions of another Company?

Office A executes a specified policy, and inserts a condition, that, if the same property is jointly insured, a rateable proportion only is to be paid. On the other hand, Office S, which *does* cover the same property, although under a different form, sees fit to declare, that, in case of loss, the Office A must waive its own condition and bear the first brunt of the loss. It is not difficult to discern the reason for treating such varied policies when issued by one Company in the manner prescribed; but no better reason can be assigned for Office A allowing Office S to annul the

condition of its policy in the manner referred to, than the intention which A has to return the compliment in kind at the first opportunity which may present itself.

It cannot be alleged that any real difficulty exists in arriving at the respective proportionate claims of a specified and an average policy. The liability of each, separately ascertained, is the simple test of the proportion which each has to pay. The rule in such a case may be shortly stated, thus:—The amount of *liability* of every specified policy is the whole amount of loss, as far as the sum insured: on the other hand, the amount of *liability* of an average policy is, such a proportion of the loss as the sum insured bears to the value of the property covered. When these two liabilities, taken collectively, do not exceed the amount of loss, then each pays the whole amount of its liability; but when they exceed the total loss, then each settles on a *pro ratâ* calculation of the separate liabilities.

As the extension of the principle which affirms that joint average policies shall have a joint action in the settlement of claims, is now admitted, so, in like cases, joint specified and average policies would not involve any practical difficulty. It is to be regretted, that while an important alteration has been effected, it has not been made complete in this respect. The omission of the second clause in the present average form would have had the advantage of placing specified policies on the same footing as the more limited averages are now placed; thus introducing harmony into the different kinds of settlement, and at the same time establishing what is, in effect, a more clear and equitable rule.

It is also a subject of some regret, that the alteration made in the London average form was not extended at the same time to all average forms, and made to apply every-

where. It is understood that no change is to be made in the Liverpool mercantile policies. The old rule of the more limited range settling first will still be maintained, in all its integrity, in that large emporium of commerce. The practice which has been declared in London to be vicious, and to stand in need of alteration, is to be, for the present at least, upheld in this one important branch of business. It is not probable, indeed, that this can be any other than a temporary and transitory arrangement. The objections to the old system will be held, at no distant day, to be as unanswerable in the port of Liverpool as in the port of London. A heavy loss to be paid on a cotton-shed, with average clause, or under a dock or certified warehouse policy — while the wider range, or general floater, takes only a subordinate part, or possibly no part at all—will one day give irresistible weight to the argument for change. The general adoption and application of the improved principle may be anticipated, with complete confidence, as likely to happen at an early date. In the meantime, it is presumed that the additional clause will form part of the average clause in all other branches of English business.

At the next opportunity, when the subject is under discussion, it will be highly desirable that the form itself of the average clause should undergo revision, with a view to alteration. The present form is unnecessarily diffuse—wordy—and is very far, indeed, from being lucid to any who are not already familiar with the subject. It might be with great advantage abridged, and would certainly become more intelligible in the process. Many improved forms have been at different times suggested; and, in the absence of any other or better, the following might serve as the basis for a remodelled declaration of average.

It is hereby declared and agreed, that this Company shall be liable only for such a proportion of any loss as the sum insured by this policy may bear to the full value of the property covered.

And it is further declared and agreed, that if the assured shall be also insured by any other Company on property wholly or partly covered by this policy, then this Company will bear its share of the loss in the proportion that the amount of its liability may bear to the amount of the liability of any other policy, separately ascertained by the rule of its own conditions.

This latter subject (the alteration of the clause) is, however, one which may be very conveniently laid aside until a suitable occasion for its discussion arises; and, in the mean time, it can be thought over, and preparation made for making the change, when it comes, more complete and effective.

The addition of the third clause to the two, forming the average clause (*see* the Essay of January, 1853), which now forms part of the London mercantile policies, will be productive of very considerable practical results. These will appear in two directions: there will be the influence of the rules on the adjustment of claims among the Offices interested, and also those which regulate the settlement of losses between the Offices and the assured.

The settlement of claims among the different Companies, when jointly interested, will, in not a few cases—indeed, generally—assume a very simple form. A slight examination, however, will suffice to show that, for many others, clear rules are necessary to be promptly established, in order to exclude the risk of wide differences of opinion.

Take one or two of the most common forms of combination: a policy for merchandise in the docks, in Office A; one on goods in the wharves and docks, in Office P; and another general floater, including both docks and wharves, in Office S. A loss may happen in either range: first, in

the docks; second, in the wharves; third, in a public warehouse, not included in either of the former. We have already seen, in former articles, in what manner the existing rules of settlement operate in each of these cases; the object of our present inquiry is, what will be the practical difference made by the introduction of the new clause.

Insurances.	Property.
Office A, £5,000 docks . . .	£10,000 docks.
„ P, £10,000 docks and wharves .	5,000 wharves.
„ S, £5,000 general floater . .	5,000 elsewhere.
Loss, £6,000 in docks.	

The former rule, as we know, would have compelled the settlement of this claim in the order of the extent of ranges. The present rule inquires for the amount of *liability* of each Office, independently taken, as though no policy but itself existed, and will give this result:—

Liability of A, as £5,000 to £10,000—say,	½ of loss	£3,000
„ of P, as £10,000 to £15,000— „	⅔ of loss	4,000
„ of S, as £5,000 to £20,000— „	¼ of loss	1,500
Total liabilities . .		£8,500

to pay the loss of £6,000. Each Office will then pay its share *pro ratâ*.

In this case, the sum of liabilities is seen to exceed the amount of loss, which brings the policies into apparent contact or dependence. It is obvious that it must be according as the distribution of property brings the joint liabilities up to, or to exceed, the amount of loss, that this kind of modified dependence is created. In all cases where the joint liabilities do not equal the amount of loss, each policy is strictly independent of the other, and settles and pays as though no other policy were in force. Take the same insurances—

Insurances.		Property.
Office A,	£5,000 docks . . .	£10,000 docks.
„ P,	£10,000 docks and wharves .	30,000 wharves.
„ S,	£5,000 general floater . .	10,000 elsewhere.

Loss, £6,000 docks.

Liability of A, as	£5,000 to £10,000—½ of loss .	£3,000
„ of P, as	£10,000 to £40,000—¼ of loss .	1,500
„ of S, as	£5,000 to £50,000—$\frac{1}{10}$ of loss .	600
	Total independent liabilities . .	£5,100

Here it is seen that the aggregate sum of liabilities does not reach the amount of loss, and the policies are throughout strictly independent.

There is no ground for anticipating that any real practical difficulty will arise whenever the loss happens under circumstances that the whole of the policies are interested. Each can ascertain its own liability; and, upon this basis, the settlement may be made quite equitably to all the parties concerned. But when the loss occurs where all the Offices are *not* interested—say, with the policies just stated, in a wharf, or in a warehouse not in a dock or in a wharf—can a strict independence be then maintained, and the claim settled, without reference to existing policies not affected by the fire? Will the policies covering the lesser ranges—not extending to the place of the fire—be allowed to be exhibited, and brought in deduction of the amount of goods covered? To make the case clear, take, as before—

Insurances.		Property.
Office A,	£5,000 docks . . .	£10,000 docks.
„ P,	£10,000 docks and wharves .	5,000 wharves.
„ S,	£5,000 general floater . .	5,000 elsewhere.

Loss, £3,000 on a wharf.

A strictly independent settlement would be—

Liability of P, as	£10,000 to £15,000—⅔ of loss .	£2,000
„ of S, as	£5,000 to £20,000—¼ of loss .	750
		£2,750

Here the question is at once raised,—Ought the policy of A, £5,000 docks, to be brought into account, and allowed in deduction of the sum of property covered in the average statement? This important question, certainly not free from difficulty, may give rise to conflicting opinions, and the sooner it is met and answered the better. It is just one of those points which are so much easier to decide before a loss happens than afterwards, when heavy claims are to be adjusted among the disputants.

It may be shown (*see* article of April, 1857), that a strict construction of the independent liability principle does not admit, for a moment, of any such rule of settlement. What has the Office with the wider range to do more than the declared conditions of its policy prescribe? Office P declares, by its policy, that it will pay such a proportion of the loss only as the sum insured bears to the value of the property; or, if jointly insured, in the place of loss with other Companies, pay *pro ratâ* with them. But why should the loss of P be *increased* by the fact of another insurance, not touching the fire, existing in Office A? For if the deduction of the policy of A be admitted, that rule of settlement would add to the loss of P £250 in the case just stated.

It may also be alleged, that there is not a word in the third clause, lately adopted, to sanction the practice; that clause does not go a step beyond a declaration of strict independence. Furthermore, although it is true that the strict construction of the clause would bear, in many cases, very hard upon the assured, it is clearly the fault of the assured himself in arranging his policies in a needlessly complicated form, with no other view or purpose than to save a small fraction of premium, and it is but just that he should take the consequences. Why should the uniform

action of a sound rule be broken into to afford facilities for the assured to save a small margin of premium? To all this it might be added, with truth, that the principle of deducting the policies for the smaller limits is open to many grave objections, not the least of which is to be found in the uncertainty of defining, in many supposable combinations, what deductions should be admitted and what excluded, on the ground of greater or less extent of area.

There is one point of view in which a strict observance of the independent liability principle, in all its rigour, would produce results certain to be welcome to the manager of every Fire Insurance Company in the kingdom. Such an interpretation would very speedily bring to an end all those complicated combinations of average ranges which, at the present time, render it impossible to form even an approximate estimate of the total liabilities of the Companies in any one range. With policies running over one dock,—all the docks—wharves, including docks—public warehouses, including wharves and docks,—how can any manager form even a rude guess at what may be the total amount covered by his Company in any one range? Act, however, upon the rule of independent liability in its integrity; refuse, in short, to allow the exhibition of a policy for a minor range to be brought in a settlement of claim in deduction of the goods covered, and a great step will doubtless be made towards effecting a most desirable object.

The results would be immediate. All the different ranges must then be kept entirely distinct. There could no longer co-exist policies either in one Office or in several, with ranges running into, or (if the expression may be used) overlapping each other. We should then see policies for the docks—policies for the wharves, not including the

docks—policies for the public warehouses, not including either docks or wharves—or, if these natural divisions did not suit the objects, or the peculiar trade of the assured, there would be the six miles floater, including all and excepting none.

It is very true that this arrangement of policies would not give all the materials for an exact account of the running liabilities of a Company; but the advantage to Offices of having to deal with policies thus classed, in making estimates of amounts of outstanding liabilities, need not be further expatiated upon or explained.

The object (if ever it should be attempted) would be best attained by submitting to the public the detailed forms of the proposed mercantile policies, upon the understanding that they must each be kept clear of the other—each form being subject, in case of claim, to its own independent average calculation. The following clause (or something like it) might then be added to the conditions, in order to remove all doubt or possible misapprehension.

It is also declared and agreed that, if the assured has insured, by a separate policy or policies, with this or any other Company, for property in one or more of the warehouses or places within the range of this policy, then this policy will not extend to cover any goods in the said warehouse or warehouses thus separately insured.

This appears, at the first glance, to be a somewhat inviting view, and strongly to favour a strict interpretation of the new third clause; but on deliberate reflection it will be found, it is to be feared, quite impracticable. Sudden alterations of system, where large bodies of the public are concerned, are generally impolitic. Our present system has been one of long growth, and will with difficulty bear an entire change. The London merchants have been long used to the great facilities offered them by the mixed forms

of floating policies referred to; and restrictions, suddenly adopted, would be justly viewed by them with distrust and suspicion. The plan of issuing only limited forms for ranges not touching each other, might be a very fair object for the Companies to aim at; but it would not prove, by any means, an easy task to convince the mercantile community that sufficient reasons existed for the sudden abolition of the old freedom allowed to their insurance operations. In any view of the case, the time does not appear to have arrived for making an attempt at so considerable an alteration.*

This being conceded, the rule of treating the sums insured by limited average policies in the same manner as specified policies are treated in the settlement of claims, must necessarily become of general adoption. Wherever the assured has policies of different ranges, and a loss happens in one or other of the more extended ranges, he must be allowed (in spite of all rules or theories to the contrary) to set off from the amount of property covered the amount he has specifically insured in the limited range or ranges.

A plain case or two will make the rule perfectly intelligible to those who may not be familiar with the subject.

	Insurances.	Property.
Office A,	£5,000 docks . . .	5,000 docks.
„ G,	£5,000 docks and wharves .	£5,000 wharves.
	Loss, £5,000 wharves.	

If the dock insurance is to be dealt with (as it must) as a specified policy, the calculation proceeds—as £5,000 is to £10,000; but deducting the dock policy—as £5,000 to

* A close attention to this part of the explanation will prepare the reader for what subsequently happened, viz.:—The abandonment of the Independent Liability principle. The proposed cure for the evils complained of, would soon have proved worse than the disease itself.

£5,000; making the whole loss (£5,000) to be paid by Office G. On the strict construction of the third clause, the policy of A would not be permitted to be exhibited in reduction of property covered by G. This would give a settlement to G of £2,500, instead of £5,000, and the assured would recover only the half of his loss, although, as far as the total amount of insurance was concerned, he was fully covered.

A glance at this simple case shows that such mixed forms of policies could never be issued on the one side, nor accepted on the other, if such a construction of the clause were to be attempted. Such policies, and such a construction of the clause, cannot possibly coexist. It would be, no doubt, a very efficient weapon to compel an alteration in the forms of mercantile policies, and to enforce the rule that all classes should be kept distinct; but, until it is thought politic to attempt that alteration, the rule of deduction must, beyond all doubt, be held as the rule of settlement.

It being, then, abundantly clear that the rule formerly practised, of admitting in ordinary settlements the exhibition of policies for minor ranges in deduction from the sum covered, must be maintained and steadily acted on, the duty of the assessors of claims will be made easy by a general understanding taking place to govern their operations—the rule being, that lesser ranges of average policies are to be held in the same light and treated as specified policies, deducting the sum of such policies in the average statement as specifically covering that amount of the goods under the protection of the wider policy.

In the case of the London mercantile policies, the process of adjustment may often appear somewhat involved, from the various forms and ranges simultaneously in force. For example: there may be—1, a policy for one dock (say

the London); 2, a policy for all the docks; 3, a policy for some wharves named and the docks; 4, a policy for all the wharves and docks; 5, a six-miles policy, including all except the carriers' warehouses; 6, a six-miles policy including the carriers.

A loss happening in the London Docks, all are directly interested, and there will be six liabilities to be independently estimated—all six paying each its quota part. A loss occurring at the St. Katherine Dock, under policy No. 2, there will then be five ranges interested, and each is required to make its own average calculation; but, in that case, the policy No. 1 must be allowed to be brought in deduction from the sum covered. Again, a loss in a warehouse not on a wharf or in the docks, under No. 5, Nos. 5 and 6 only would deal with the claim, while Nos. 1, 2, 3 and 4, would be shown for deduction. Finally, a loss in a carrier's warehouse would fall only on No. 6, the whole of the others appearing in the shape of a reduction of the amount of property covered, as though they had each been specified insurances.

The process described in the last paragraph has not the least pretension to the character of novelty; it is merely a continuation of the existing rule of settlement; and the only object of now describing it with some minuteness, is to prevent any risk of misapprehension on the part of those who may be called upon to apply the new third clause in the regulation of claims. That clause, as we have seen, alters fundamentally the process of adjustment among the Offices whose policies range over the place of the fire, and thus have a liability in common; but it leaves untouched the former laws of settlement as to those which cover specifically, or by a minor average range, a portion of the property included within the limits of the wider area.

Enough, and possibly more than enough, has been now said on the subject; and the entire object of these remarks will have been attained, if a clear and well-defined idea of the nature and extent of the change made by the recent alterations in the average form is promoted among those who are called upon to give practical effect to it in the adjustment of claims.

Before closing the article, it may not be without its use to those who are looking into the subject for the purpose of instruction, to specify, in an abridged form, some few of the points necessary to be borne in mind when looking for principles which lie a little below the surface. They are merely a repetition, in a condensed form, of statements already made in the present and former articles.

1. The amount of *liability* of every specified policy is the whole amount of loss, as far as the sum insured. The value of the whole property covered at the time of the fire forms no part of the inquiry.

2. In all cases where the sum of an average policy is equal to, or greater than, the property covered within its range, it becomes in all respects a specified policy, and has no advantage over it. The operation of the average principle has ceased to have any distinctive effect in the settlement.

3. Joint insurances of specified policies are quite *independent* of each other when their united sums are only equal to, or less than, the loss.

4. Joint average insurances are in like manner *independent* of each other when the sum of their *liabilities* is only equal to, or less than, the loss.

5. The only cases where the Offices are brought into contact, are when the gross amount of specified policies exceeds the amount of loss. In the same way are average

policies brought into mutual dependence, when the united liabilities exceed the loss. The proportional settlement between the Offices proceeds in exactly the same form in both cases.

6. It follows, then, that so soon as the liabilities of average policies are independently ascertained, there is no difference of treatment between the amounts of those liabilities and similar amounts insured in the place of the fire by specified policies.

A portion of these remarks may possibly appear, to those well informed on the subject, as a useless repetition of trite and well-known principles. To this criticism the only answer needed is, that they are not intended for those who already know, but for those who do not know, the method of working these average problems. Of all the merchants who effect policies of this description, and whose interests are so deeply involved, how many really appreciate or comprehend the conditions of their policies? And as to those whose business it is, in the various Offices, to explain, while accepting risks, the practical operation of the clauses, and those also who are called upon in case of loss to adjust the claims, it is not saying at all too much to remark, that there are not a few who will be the better for a renewed and thoughtful attention to the points discussed. To this it may be added, that if all those whose duty it is to understand the subject, but who do not, will only give a patient hearing to what has now been advanced, there will be an audience quite numerous enough to satisfy the ambition of the writer.

The practical difficulties which were glanced at in the last essay, as not unlikely to arise from the introduction of

a novel principle of settlement, by the insertion of the *Independent Liability* Clause, soon developed themselves. It was found to be a much easier task to destroy the old machinery, than to contrive and set in operation the new. Whatever evil might justly be spoken of the antiquated and rejected rules, it was early discovered that no improvement had been effected by the recent and unqualified change. It was a fine opportunity, and not neglected by the professional assessors of losses, to give proof of their acumen in debate. The direct interest of their respective clients became apparently the only principle adopted or recognised by them in the settlement of claims. At length a general cloudy uncertainty was reached that called loudly for a revision of the whole subject.

The *Independent Liability* clause, admirable in itself, needed the help of clearly expressed rules for its use in different combinations; and at a time when some new and important cases had given rise to fresh and most unsatisfactory discussions, the writer saw it to be his duty to make an effort to procure a re-examination of the whole question. In the month of May, 1860, he addressed the following letter to Mr. Drummond, the Acting Manager of the Sun Office, on the subject. The entire letter is printed, not on account of any present value it may have, but simply with a view to give a clear impression of the various phases which the subject has assumed at different points of its history.

SUN FIRE OFFICE,
3rd May, 1860.

JOHN DRUMMOND, ESQ.

SIR,—A short time since you did me the honour to confer with me on the subject of certain proposals which you had received from Scotland for altering the existing form of average policies, especially applying to the city of Glasgow. Since that time I have

been favoured by Mr. Johnston, of the North British Fire Office, Secretary to the Local Committee in Glasgow, with copies of papers relating to the same question. My present object is, very briefly, to call your attention, and through you the attention of the Offices generally, to the existing variations, and what may even be thought defects, in our forms of average policies, which I greatly fear may one day lead to serious difficulties.

The root of the embarrassment felt at present is, no doubt, the recent change in the form of the London Mercantile average policy, made by the introduction of what we recognise under the term of the *Independent Liability* Clause. This measure was excellent as far as it went, but unhappily it did not go quite far enough to remove the difficulties which had been experienced. In the first place, it left the whole of the Liverpool business untouched, and consequently open to the same grave objections, which had led to the alteration in London; and, still further, no provision whatever was made for establishing any rules for the settlement of losses under the new conditions. The change abolished for the greater part the old rules of settlement, but at this hour it does not appear that any one is prepared to say what is the new code to be substituted in their place.

Now, with every disposition to act upon the rule of letting well alone, and not to go in quest of troubles by anticipating them, I cannot, for my own part, think it wise or politic on the part of the Offices to leave the average question where it now stands. It is quite true we get through our difficulties when they arise, in one way or other; but we are now fast coming to the point, when the complete absence of any acknowledged rule will place every Office at the mercy of the sturdiest claimant, while among the offices themselves the victory will be sure to remain with those who have the highest powers of endurance in argument.

I would ask of you the favour to review the case as it now stands. In London, and in all other parts of England and Scotland (except Liverpool), the recent introduction of the Independent Liability Clause by many Offices has wholly removed the old landmarks. The ancient and acknowledged, but vicious principle of the smaller average range, being called upon first in settlement, is suddenly altered, but questions are naturally asked on all sides,—How are losses to be settled in this and the other very probable contingencies? What method of settlement is to be adopted when losses happen in the wider range; are the policies for smaller ranges to be deducted from the estimate of goods covered? I am sorry to add, that at the

present moment I do not know of any man or any tribunal who can answer these questions with the least authority.

The case is, in my humble opinion, made much worse by the fact, that in Liverpool the old rule of the smaller range paying first is maintained in full authority. The Independent Clause is there applied only to policies of the widest range; but average policies for sheds, docks, certified warehouses and general floaters, are accepted in every variety of combination, and all continue to be dealt with in case of loss as heretofore by the old principles of settlement: the principles referred to being identically the same as those which have been unanimously discarded as untenable in London.

The suggestion recently made by our Scottish brethren for the establishment of a third system of a totally different nature, does not at all improve the prospect. It is not my intention here to analyse the proposed alterations. The gentlemen who have entered upon the discussion have evidently given great attention to the subject, and their plan in several points of view would have great advantages, but surely it cannot be tolerated for a moment that an entirely novel system should be added to the two, each differing from the other, already in use in the two first commercial cities of the empire. No argument is needed to show the impolicy of proclaiming to the mercantile community that the same Companies have one system in the Port of London; a second, of quite another character, in the Port of Liverpool; and then, crossing the Tweed, a third, widely different from either of the others.*

Under these circumstances I beg now, very respectfully, to suggest that the time has arrived for taking some steps to bring the whole subject before the different Companies, with a view to place our average settlements on a more solid basis. I strongly recommend that we should establish, without further delay, some well-defined principles of treating such claims, not only between the Offices themselves, but also between the Offices and the assured. I very much fear that we may have one day to discuss first principles with some great practical question of loss in hand to add to the difficulty.

So far as I have been able to consider the subject, it appears to me that there are but two practicable solutions of the question. The first which presents itself is to insert a condition in all average policies, to have the effect of keeping all the ranges distinct from each other.

* This paragraph was penned under a misapprehension. No one was proposing to establish a new rule for separate or local government. The effort referred to was a well-intended attempt altogether to remove the existing anomalies, which were likely soon to prove everywhere perfectly intolerable.

In such a case all policies of a wider range would cease to apply in any degree to any place or places covered by specified or by average policies of less range. This result would be attained by the addition of a clause of this kind—

It is also declared and agreed that if the assured has an insurance by a separate policy or policies, with this or any other Company, on property in one or more of the warehouses or places within the range of this policy, then this policy will not extend to cover any goods in the said warehouse or warehouses thus separately insured.

This plan would have the merit of being both simple and complete. As the policies would all be held to apply only to their own specific range, every settlement would be worked without embarrassment, and no policy of a larger range could be brought into any kind of contact with one of a smaller extent. The complicated and involved forms would cease, and merchants would act upon the suggestion and take out their insurances in reference to it. There would be the range of the docks with their uptown warehouses, that of the wharves, and then the general floater, not including either of the former. In all cases there would be the understanding that each policy was wholly independent of the other.

In spite of these apparent advantages, however, I am very far from recommending the plan for adoption. It would, in my humble judgment, too much unsettle all the existing habits of mercantile insurance, and although I think it might be carried into practice in London, without encountering any insuperable difficulty, I have reason to believe that in Liverpool the proposal not to cover excess of stock in smaller ranges, by policies of wider limits, would be met by an opposition on the part of the assured, that would leave no hope of a permanent settlement upon that basis. It is of the highest importance that whatever rule is now adopted should be general, and it may with truth be added that almost any intelligible law of settlement generally adhered to, will be an improvement upon the uncertainty at present hanging over the existing system.

The proposal which I now beg to submit, without further preliminary discussion, to your attention, does not attempt to introduce any new principle, but is, I think, in entire harmony with all our existing transactions. It is simply this:—1st. That a more simple and lucid form of Average Clause, of which the Independent Liability Clause should form a part, be substituted for the one at present in use, and be universally applied. 2nd. That a brief code of laws for

the regulation of claims be adopted generally by the Offices, and printed and circulated among the assured, which, although not forming part of the policy, could nevertheless be appealed to in all cases as the rule for the settlement of claims.

The form of Average Clause I venture to submit is the following:—

It is hereby declared and agreed that this Company shall be liable only for such a proportion of any loss as the sum insured by this policy may bear to the full value of the property covered at the time of the fire.

And it is further declared and agreed, that if the assured shall be also insured by any other Company on property wholly or partially covered by this policy, then this Company will bear its share of loss in the proportion that the amount of its liability may bear to the amount of the liability of any other policy or policies separately ascertained.

I do not think it necessary to trespass upon your patience by pointing out the advantage that this simple expression of the average principle has over the cumbrous and involved phraseology of the clause now in use. I think it best to leave the subject for consideration and comparison without further comment.

The construction of the code of laws for the settlement of average claims under this form of policy will require, beyond all question, some care to make it efficient, but I cannot help thinking that with the assistance you may expect to receive from the managers of other Offices, a very brief, clear, and practical set of rules may be embodied. I submit the following, only as an outline, needing, no doubt, great correction and improvement.

1. When any loss happens where the merchandise is protected by one or more Average Policies, the assured is to render an exact account of the value of all the goods covered, and in case the policies extend over different limits, the said account is to show exactly the amount lying, at the time of the fire, in each respective range described in the policies. After the verification of this statement, the liability of each policy will be ascertained on the average condition of the policy.

2. In all cases of loss where the property is covered by policies of different extent or ranges, whether specified or average, each policy will be held liable to the payment of a share of the loss in proportion to its liability thus separately ascertained.

3. The liability of each policy being the amount of loss which

each would have to pay if no other policy but itself existed, it will only happen when the aggregate sum of these liabilities exceeds the amount of loss, that they have any contact or connexion with each other, and in case of such excess of liability over the loss, the proportion of loss for each will be settled *pro ratâ*, according to the ascertained liability of each policy.

4. In the case of all specified policies having a joint interest, and also when average policies, owing to over-insurance, are liable for the whole loss, the total amount covered by the policies will be taken as their liability, and their share of the loss will be computed from that estimate.

5. Where policies of different ranges exist, and the loss happens in one of the more extensive, it will be permitted to the assured to deduct from the estimated value of his goods in the whole range, the amount of the goods shown to be deposited in the smaller ranges, not exceeding the amount of the policies specially applicable to those restricted limits.

6. When any merchandise is covered by a special policy identifying the same by marks and numbers, or otherwise, the merchandise so identified and insured will not be considered to be under the protection of any other policy or policies held by the assured.

These appear to me to be all the points which are necessary to be touched upon at the present moment. There is nothing that can, with any propriety, be styled a novelty in any part, except where in the 4th rule specified policies are liberated from the rule of priority of payment, but can call upon average policies also covering the same goods to take their fair share, and only their fair share of the loss. This is so obviously just, that I abstain altogether from putting forward any argument on the subject on this occasion. I have ventured to illustrate the effects of this antiquated rule of priority of payment, in the case both of specified and average policies, in some slight essays on the subject which have appeared in the *Assurance Magazine*, and which may be consulted by any one wishing to pursue the subject in all its details.

I now beg to leave the matter in your hands, expressing the hope that the whole subject will, under your guidance, soon receive that share of attention from the managers of the Offices interested, which I am very certain its practical importance deserves.

I remain, Sir,

Your very obedient servant,

R. A.

The appeal for renewed inquiry, thus urgently made, from more than one quarter, was promptly responded to. At the first General Meeting of the Associated Offices, a Committee was appointed with instructions to enter upon a searching investigation of the subject in all its bearings, and bring up a report at the earliest possible moment. The investigation made was both full and complete. Neither time nor pains were spared to give to every branch of the question, and to every suggestion offered, deliberate and careful consideration. It is not necessary to enter into a minute description of the course which the inquiry took in the Committee, nor the reasoning which led to the ultimate adoption of the different sections of the existing clause.

The Report of the Committee was as follows:—

The Committee appointed to consider the Forms of AVERAGE CLAUSE now in use, and to suggest a Form which should be applicable to the whole Kingdom, have to report as follows:—

They have given attention to the existing conditions of average, with a view to determine their operation, and how far they carry out the intentions with which they were adopted, and the principles on which contracts of that nature ought to be founded.

It is quite evident that different meanings are attached to the conditions as they stand, even amongst persons who have taken considerable pains to ascertain their precise effect.

The Committee have discussed at much length the bearing of the conditions now in use, and satisfied themselves, by examples of settlements which under them might be made, that the results might be very different from what an equitable adjustment would require.

The Committee interpret the first of the *existing* conditions to establish merely the principle of proportion between the insurance and the property protected—the second, to exempt the policy from any contribution to loss when there is not an excess of property to cover over any more specific insurance—and the third, to regulate the extent, and mode of determining the amount, of contribution, whenever such excess does exist.

The Committee are mindful that the object of the third clause *was to prevent* escape from contribution, by a merely nominal

extension of the range of the policy to places in which no property was, or was intended to be, deposited.

Taking into account these various elements, the Committee came to the conclusion that it was highly expedient to reconstruct the present conditions, and to settle them on the principle of successive liability of differing policies, according to the extent of their respective ranges; and they therefore adopted, as the groundwork of their clauses, the following resolutions:—

SPECIFIC POLICIES.

Resolved—

That specific policies, not subject to average, are not entitled to relief in case of loss, by contribution from any average policy which may include in its terms the property destroyed.

AVERAGE POLICIES.

Resolved—

That as regards the order of contribution to any loss by policies of different ranges, subject to the conditions of average, it shall be determined by the extent of such ranges, and on the principle of the policies of more limited range being successively exhausted first.

Resolved—

That instead of the condition providing for settlement of losses on what is known as the *Independent Liability Clause*, provision be made for the erasure from any policy of any place or commodity, in which, or of which, at the time of any fire happening, there is no property to protect.

These views the Committee have endeavoured to express in the following

CONDITIONS OF AVERAGE.

1. It is hereby declared and agreed, that whenever a sum insured is declared to be subject to the Conditions of Average, if the property so covered shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon, then this Company shall pay or make good such a proportion only of the loss or damage as the sum so insured shall bear to the whole value of the said property at the time when such fire shall first happen.

2. But it is at the same time declared and agreed, that if any property included in such average shall, at the breaking out of any fire, be insured by any other policy, which, whether subject to average or not, shall apply to part only of the buildings *or places*, or of the property to which such average

extends, then this policy shall not cover the same, excepting only as regards any excess of value beyond the amount of such more specific insurance, which said excess is declared to be under the protection of this policy, and subject to average as aforesaid.

3. And it is further declared and agreed, that if the assured shall claim under this policy for loss or damage to property embraced in the terms of any average policy extending as well to other buildings or places, or to other property not included in the terms of this insurance, and if at the breaking out of any fire there shall not be any property in such other buildings or places, or any such other property actually at risk to be protected by such policy, then so far as regards the settlement of any claim under this policy, the terms and liability thereof shall be held to be concurrent, in all respects, with those of such other policy.

The Committee, holding the opinion that a floating policy receives premium only on the excess of value in property beyond the amount of any more specific insurance, do not see grounds on which to charge it equitably with any portion of the loss the specific policy must bear, if no floating policy existed; and they are indisposed to disturb a principle of settlement which is so fully understood and acted on by the commercial community generally.

In conclusion, the Committee trust that their recommendations will approve themselves to the acceptance of the Offices, and tend to perpetuate amongst them that spirit of harmony and fair dealing which, up to this time, has so generally obtained.

London, 11*th July*, 1860.

SUN.
PHŒNIX.
GLOBE.
LIVERPOOL AND LONDON.
SCOTTISH NATIONAL.

The Report of the Committee, and the conditions embodied in the proposed and amended clause, unanimously adopted, and now in general use in every part of the United Kingdom, thus affirmed the following principles:—

1st. That no specified policy was to call upon one

under the conditions of average, to contribute any share of the loss, so long as any part of its own liability remained unexhausted.

2nd. The existing system, in the case of partially concurrent average policies, of bringing the most limited ranges into priority of settlement, was affirmed and perpetuated.

3rd. Instead of the *Independent Liability* Clause, which had been the fruitful source of so much doubt and contention, another clause was substituted, dealing a powerful blow at unfair settlements among the respective Offices, which had sometimes been attempted under the plea of what were, in fact, unreal or pretended extensions of range.

On each of these topics it may not be unprofitable, at this point, to offer a few plain and unpretending remarks.

The effect and practical operation of the *Independent Liability* Clause, which had been adopted by a sudden and impulsive movement, and formed for a short time the third portion of our general average conditions, is attempted to be explained in more than one of the preceding pages. It has been described as a rule clearly based upon equity and fair dealing, and, without any doubt, removes many of the glaring anomalies which arise under other systems of settlement. Why was it then so decidedly abandoned? The remarks which have been already made, in reference to some of the difficulties of applying it in practice, will have prepared the reader for the reply. The general adoption of that clause was, in short, better calculated to revolutionize than to reform the practice, in respect of English mercantile insurances. So great, indeed were the changes necessarily involved, that when they came to be

deliberately weighed, the supposed advantages were found to be immeasurably light in comparison. It was clearly seen how easy was the task to unsettle and destroy the authority of the *common law*, but who was prepared to draw a new and binding *statute* provided with efficient penalties to enforce its application? It was, in fact, after this close and continued inquiry, admitted by all, that an adherence to the old rules, with the authority of recognised practice and precedent, accompanied by improved conditions, presented by far the best prospect for the peace and security of both assurers and assured.

The principle of exhausting the specified policy before an average one touching the same risk was called upon to share the loss, was simply the perpetuation of the old rule; and unless the whole system of settlement had been deliberately changed, was best continued unaltered. If another principle of settlement between partially concurrent average policies had been decided on, it would probably have been found necessary to modify the rule as to specified policies. As it is, the original rule of practice is merely affirmed and kept in force.

In the same way the second portion of the clause reaffirmed the principle, in the case of partially concurrent average policies, that the minor range should continue to be called upon to take priority of settlement, in the way fully explained in the preceding pages.

It will thus be seen, that, with the exception of a very marked improvement in the wording of the second paragraph of the clause, giving additional force and meaning to it, the two first sections of the old Average Clause were preserved unchanged. The third section of the new clause, carefully contrived for an excellent purpose, obtained, however, the unenviable distinction of reversing completely the

principles and practice of settlement enjoined by the corresponding portion of its immediate predecessor.

Before offering a few brief explanations in reference to the third section of the clause, as it now stands, the writer hopes it may not be considered out of place or unsuitable to add, that the abandonment of the *Independent Liability* Clause, of which he was himself the originator, in the year 1843, met, upon this occasion, with his entire approval and concurrence. The reasons, as they were brought forward in their order in the Committee of 1860, against any attempt at introducing a new and unfamiliar, but, moreover, exceedingly stringent code, were quite enough to satisfy his mind of the wisdom of holding fast to the long-established usages—albeit, not without their imperfections. No good purpose would be now served by any attempt at recapitulating these arguments. It is enough to say that, after what has been written in favour of the independent principle in the preceding pages, it is not without a sentiment of paternal regret and disappointment that the writer consigns his offspring to the family burial place, in common with many other pleasing theoretical, but impracticable suggestions.

The third section of the clause, as it stands, is a powerful remedy adapted to the cure of an inveterate malady. The practical operation has been more than partially successful —as far as we have gone it has been quite complete.

The principle of the lesser or more limited range in the case of partially concurrent average policies, being first brought forward for settlement, easily admitted, as explained in more than one place in the preceding pages, of being made the instrument of wrong and unfair dealing. The mere declaration of the range obviously afforded no test whatever as to the real risk covered by the respective policies. The opportunity was too tempting to be lost

sight of, especially by those whose moral vision is so bounded as to bring only some petty present advantage into view, and sees nothing whatever of the future beyond. The game of pretended enlargement of range was not so difficult to learn but that many apt scholars soon rivalled, and even surpassed, the inventors. What with unintentional mistakes on the part of the assured, and inventive contrivances on the part of some of the assurers, it was high time that a remedy should be found, for the evil complained of appeared likely soon to become contagious, and might have proved an incurable malady. That remedy has fortunately been discovered, and has successfully stood the test of practical application. Nothing could have worked better than the third section of the present clause whenever it has been brought into active use.

The subject of so much just complaint was, in a word, that extensions of range, purely verbal, were made to serve the purpose of withdrawing the policy from fair contribution. The remedy provided by the third paragraph of the clause is, that in order to be pleaded, all such extensions must be real. Whatever may be the area of the range, large or small, of the respective policies, if, at the time of the fire, the goods under their protection are the same, then are those policies (however worded) declared to be actually concurrent for all the purposes of settlement.

One or two illustrations of ordinary cases will make the change wrought in the clause conspicuously clear. These statements, as well as some which may follow, are intended, it may be remarked, rather for the use of the uninitiated than the already skilled and practised reader.

A floating policy of six miles' range—one covering all the docks—and one limited to the London Docks only—are issued by three different Companies. A loss happens

in the London Docks—the old rule, without further inquiry, called on the single dock policy to settle first, and if the insurance was adequate, to pay in full. Under the new rule, if the declaration of the assured shows there were no goods at the time of the fire protected out of the London Docks, every policy is declared to be concurrent, and bears a *pro ratâ* share of the loss.

An insurance, in like manner, on one, two, or any number of wharves,—say, merchandise at Beale's, Topping's, and Nicholson's wharves;—again, a single policy on merchandise at Beale's only. A loss occurs at Beale's. If the inquiry shows that no goods at the time of the fire were actually lodged and covered at Topping's and Nicholson's, they are struck out of consideration altogether, as though they had never appeared at all on the face of the policy. And so of all minor combinations—docks and wool warehouses, two or more public warehouses, as the case may be. Whenever it is found that goods are not at risk at the time of the fire in given localities, they cease to be considered as forming any part of the area covered, and the policies exhibited may thus be reduced to a real concurrent liability, although differing ever so widely in verbal description. The absence of goods at the time of the fire from any given locality, erases it at once, whatever may be the terms of the policy itself.

In like manner, this section of the clause is intended to apply in all its force, and upon the same principles and for the same reasons, to insurances on specific classes of goods when in combination with policies of wider range and more extensive limits as to the classes of merchandise covered. The clause is quite clear as to the extension to "other buildings "and places, or to *other property*, not included in the terms "of this insurance;" then, if no such other property is

"*actually at risk*," the policies are declared to be strictly concurrent.

For example:—A policy for indigo in the docks in one Office, and another for indigo and silk in another Company. A loss on indigo. If there is actually any silk under the protection of the larger policy at the time of the fire, the limited policy on indigo will doubtless be called upon to settle the claim first, as though no other policy existed. But if no silk is at risk, the policies are by the clause made strictly concurrent and rateably divide the loss.

Take one other illustration:—A policy for first-class goods in the docks—tea, indigo, silk and tobacco; and another for general merchandise (including, of course, the former classes) in the same docks. The area is identically the same, but does not the range of the goods follow the same rule, which governs different ranges or areas as to space? Ought not the various policies to be examined upon the same principle as to real and actual extension and limitation? If there are *no other* goods but those enumerated in the limited policy, are not those policies identical and concurrent? Beyond all question that is the case, and a case clearly foreseen and distinctly provided for by the wording of the clause. If the area of space is to be reduced by striking out what is not really in effective operation at the time of the fire, so undoubtedly under the same wording, must any apparent extension of range in the list of goods, be reduced by eliminating what is not actually existent at the time of the fire. The policies in both cases must be made real and operative by the sole consideration of what they *do* cover, and not by what they *appear* to cover.

This position may be further seen by putting a somewhat extreme although not uncommon case. A policy for

tea in one warehouse at Cutler Street, at 3*s. per cent.* premium, and one on general merchandise in all or any warehouses, &c., within six miles of the Royal Exchange, at 21*s. per cent.*, and the assured owning, when the loss occurs, no other produce than tea in Cutler Street, both policies are held to be identically the same, they are construed to be of the same range and come into settlement on precisely the same footing.

The explanation now offered of the scope and intention of the clause, obviously includes all the minor and most limited cases that can actually occur in practice. For instance, the limited average policies made to cover only certain declared parcels of produce, identified by marks and numbers, and also those policies, drawn for the particular objects of the assured, to cover only specified merchandise,—possibly the cargo of one ship named in the policy,—are naturally all subject to the same law of settlement. They are, in truth, specified policies in relation to other concurrent policies of more extended range, only so long as the wider policies actually cover goods beyond the limits of the specified policies. If no goods actually exist at the time of the fire beside the marked and identified merchandise, or the specified cargo, the policies, whatever may be their nominal range either as to area or classes of goods, are strictly identical and must be so treated in settlement. The limited average policy is, in short, never to be placed in the disadvantage of priority of settlement in relation to other policies, unless there exists a real and actual extension of risk to justify the claim of exemption on the part of the wider range policies. This application of the rule is so far in harmony with the entire object for which the clause was contrived, and all that has preceded on the subject in relation to other cases, that it would be quite superfluous

to cite any fresh examples, in order to illustrate its operation.

It may, however, be worth while to give a general definition of the principle now attempted to be explained in the most condensed form it admits of. With this view, it may be affirmed, that in all cases of partially concurrent average policies, one or more of them having by their wording larger ranges, whether in respect of area or classes of goods covered, if such outside ranges are not actually more or less filled by merchandise at the time of the fire, such nominally larger range ceases to be recognised as part of the policy, or to have any effect whatever on the settlement of the claim. In other words, the total absence of goods annihilates and erases that part of the extent of the policy (whatever may be its wording) and restricts its range in the same degree.

If any general reasoning in favour of this interpretation were required in addition to a calm perusal of that portion of the clause referred to, it may readily be found in the consideration, that such a rule is quite as much needed in the case of limitations and extensions of lists of goods as of space or area. What is to hinder a revival and repetition of the same errors, let them be called for politeness' sake, in the extended lists of goods as of pretended area? A policy on indigo, for example, might, without observation or remark from the assured, be *knowingly* extended in an additional policy in another Company to indigo, and the other articles enumerated in the first-class list of dock insurances. Surely the general principle adopted, as the clause now stands, will prevent the first from suffering from the diversity of wording if none of the other goods were at risk and covered by the wider policy. The apparent extension was utterly unreal and illusory, and is to be cancelled

and erased from the policy for that reason. The wording of the clause, as it was intentionally drawn, is amply sufficient to protect the rule of equity in all its applications. It very unmistakeably declares that where, among partially concurrent average policies, any attempt is made to cast the burden of the first settlement on the more limited policy, it must be clearly shown, both in respect of goods and area, that the extension actually, as well as apparently, existed at the time of the fire.

Before finally dismissing the subject of more or less restricted area or space and the consequent rule of settlement, it may be of use to advert to a practical puzzle which has recently actually arisen, or it might not otherwise be worth while to embarrass the subject by discussing it. Policies were taken out, it may be by the assured, without seeing or intending the wording of the policies to have any special application. The first, for merchandise in the London Docks and Beale's Wharf; the second, for the London Docks and Nicholson's Wharf. A loss occurs in the London Docks. What, in this case, is to be decided about area? Which is the largest, which the most restricted range? What principle is to be assumed for the settlement of the claim?

The conundrum might have been advantageously left unsolved until the case arose, but the Average Clause is of such a temper that it apparently does not admit of rest either for itself or for others. The case has actually arisen and the riddle took the following turn. The titles of the wharves are purposely chosen at hazard.

Two policies: the first, covering merchandise at Beale's, Nicholson's and Topping's Wharves; the second, merchandise at Beale's, St. Olave's and Cooper's Row Warehouses. A fire and considerable loss at Beale's. The first

inquiry obviously must be, were there goods at risk in all the places named? There were none in St. Olave's, nor were there any in Nicholson's, thus, leaving goods in Beale's and Topping's for one policy, and for Beale's and Cooper's Row for the other. What then was to be said about area? Which policy had the widest, which the most restricted range? After straining with zealous effort to catch a principle that might stand inquiry, nothing better could be thought of, than to deduct the amount actually lying at risk at the wharves, at Topping's from the policy covering it, and the amount at Cooper's Row from the other, and then settle the loss at Beale's upon the proportion of each policy left.

It is by no means clear that this solution of the difficulty was wrong, but still it remains very doubtful how far it was right. If anyone, who is giving the matter his attention, can think of a clearer or more justifiable process of settlement in such a case (which, by the way, may often arise in one form or other), he will be doing a public service to make it known.

It may possibly prove of some use in order to give a more complete view of the whole subject, especially to those who are not practically familiar with it, to print here the Forms of DECLARATION required from the assured, and add a few words of comment as to the methods of dealing with them in settling the claims.

The first *Declaration* to be made by the assured is as follows:—

DECLARATION IN CASE OF LOSS AND CLAIM UNDER POLICIES SUBJECT TO AVERAGE.

A. B. & Co., the undersigned, do hereby declare, that the following is a full, true, and faithful statement of the whole of the goods,

wares, and merchandise, and the value thereof on the day of the fire, which was held by us either on our own account, or on trust, or on commission, which are or were lying, or being within the places and limits specified in our policy, No. 2,133,478, of the Sun Fire Insurance Company, on the day of the late fire in Beale's Wharf.

And we do further declare, that the following is a full, true, and faithful statement of all the insurances effected by or for us with other Fire Offices, upon such goods, wares, and merchandise; and that we have in this statement distinguished the specific insurances, or those that may vary from policy No. 2,133,478, before-mentioned, under which our claim is made.

And we do also declare, that we have not omitted from this statement, any goods, wares, merchandise, or effects, upon which we had at the time of the said fire any lien, claim, or title, upon which we could have made a claim for loss by fire, had such goods, wares, merchandise, or effects been destroyed by fire.

Signed, _____

Then follow schedules, to be filled up with the following all important information:—

1st. Particulars of the whole of the goods, wares, or merchandise at the time of the said fire, including those damaged or destroyed.

2nd. Particulars of goods, wares, or merchandise destroyed or damaged by said fire.

3rd. Particulars of policies of insurance with other Offices, with their respective amounts and numbers.

4th. Claim to be made in the following form—

CLAIM UNDER POLICY No. 2,133,478.

SUBJECT TO AVERAGE.

To the Directors of the Sun Fire Office.

GENTLEMEN,

We do hereby declare and set forth, that at the fire on the 1st January, 1866, the following articles, goods, wares, or merchandise, being our property, or the property of other persons to whom we are legally liable, and insured by your policy, No. 2,133,478, were destroyed or damaged by the said fire, according to the values

at the foot hereof; wherefore we claim the sum of £1,575, the amount of such value; and we further declare, that we had no insurance effected with any other Office or Offices, except as before-mentioned.

Witness our hand this day. ——————————

The list of documents may be completed by the following form of Warehouse-keeper's certificate—

WAREHOUSE KEEPER'S CERTIFICATE.

We hereby certify that the goods hereunder-mentioned were in our custody, in a warehouse situate in Tooley Street, at the time of the fire before referred to:—

Signed, ——————————

A moment's thought will suffice to show of what supreme importance to a fair settlement of every claim is the fidelity and truthfulness of the Warehouse-keeper's certificate. It is, in truth, the only collateral evidence to substantiate the claim that, in ordinary cases, is asked for. A careless, not to speak of an intentionally fraudulent misrepresentation as to the goods burned, works out promptly an injustice in the grossest form. The Offices have hitherto placed implicit reliance upon these certificates, and it would indeed be a matter for deep regret if, at any time, circumstances should arise to weaken or destroy this honourable confidence.

The London Wharfingers having under their custody such enormous amounts of merchandise, are specially interested in maintaining a character to justify so large a measure of trust as is habitually confided to them by the assured, and also by the Insurance Companies. A Warehouse keeper's certificate has been hitherto received as unquestioned evidence, and a sorrowful day will it be for all concerned, when these documents lose their value and stand in need themselves of proof and verification.

To keep this high position, however, it may be distinctly understood that not only is a general character for commercial integrity required, but also such methods of conducting their business adopted, that no difficulty can be experienced in clearly ascertaining the position of their client's goods in every part of the premises, at any moment of time. Accurate methods of registering removals or changes of the merchandise on the different floors, ought to be in daily use, so that a reliable and trustworthy statement may be immediately producible when enquired for.

There have been upon some recent occasions very just causes of complaint on this head, but there is no reason to doubt that the Wharfingers will see their interest in keeping up such a system in conducting their business, that they may not permanently labour under a marked inferiority to the Docks' management in this respect.

An inspection of these forms shows at a glance that the value of the whole statement must mainly depend upon the truthfulness of the *first* of these declarations. What was the total value of the goods under the protection of the policy, is a question clearly the base of the entire superstructure. There is, fortunately, no reason for any general suspicion that an English merchant will fail in the truth of this, any more than many other statements he is constantly called upon to make upon honour, and in which his interests are deeply concerned. But, it must be owned that in many cases, the temptations to partial views of obligation in this respect, to say the least, may be from circumstances very strong. Doubts may very easily insinuate themselves into his mind, when the result of the average threatens to turn out unfavourable, how far such and such goods (unburned) were really included in the policy, or many other suggestions may pardonably present themselves

in order to bring the sum covered and the sum insured into more perfect accordance. With the strong and very explicit wording of the declaration on the one hand, and an unexpectedly high range of produce, both in price and quantity, coupled with somewhat neglected insurance on the other, the difficulties in the way of bringing up the statement to a satisfactory balance are, no doubt, sometimes considerable. It gives the writer some pleasure to add his testimony, after long experience, that upon the whole, and taking all circumstances into account, the trying duty is generally very fairly and honourably performed.

There is, however, one plain rule of commercial probity which ought to govern this branch of the transaction. Everything which the assured would have claimed for had it been damaged or destroyed, must be included in this schedule, and valued, moreover, at the full prices which he would have asked, in case of loss, as compensation in presenting his claim. The first declaration as to the quantity and value of the entire stock under the protection of the policy being completed to everybody's satisfaction, the others, although not free from their own difficulties, do not present any similar to the former, either in kind or degree.

The *second* schedule to be furnished in putting forward a claim, is headed "*Particulars of goods, wares, or merchandise destroyed or damaged by the said fire.*" This is, of course, expected to contain a full, clear, and proveable statement of what has really happened to the stock, as the foundation of the claim. This schedule has to be supported and confirmed in all its details, by the testimony of the Warehouse-keeper's certificate in the form shown. There are some additional remarks which present themselves under this head, but as the present object is merely to

point out the ordinary course of settlement, they will be for the moment postponed.

The *third* schedule requires a complete and perfect list of all the insurances on merchandise which the assured may have made in any form, whether they may appear to him likely to affect the settlement of the claim, or not. Very important omissions, although often perfectly unintentional on the part of the assured, are frequently made under this head. It is not clearly perceived what effects may result from omitting policies, which, apparently to the inexperienced eye, cannot influence the final decision.

After what has been seen of the working of the various forms of policies in settling the incidence of claims, it will be readily admitted that too much attention can scarcely be given to this schedule in requiring a very precise and detailed list of policies, in order that those whose duty it is to examine the claim, may be completely informed on this important point.

The *fourth* schedule is the claim itself. After the preceding information has been collected and verified, there is only to ascertain the result by the simple rule of proportion. The total amount of goods covered—the sum insured—the estimate of loss, give, at one view, all the necessary conditions for making a claim under average, viz. :—to pay such a proportion of the loss as the sum insured may bear to the value of the property covered by the policy. In other words, to apportion the loss and make it fall upon the assured in the exact proportion in which he has stood his own insurer, and so is to take his fair share of the loss in that character. This primary rule having been already treated at length in the first of the preceding essays, will render unnecessary any further explanation of a principle upon which the entire system may be said to rest.

Before closing these explanatory observations, it may be of use, although with extreme brevity, to refer to discussions on one or two points which have lately become conspicuously prominent. These discussions have been remarkable, not so much on account of their novelty, as of the unprecedented extent to which some very questionable principles of settlement have been endeavoured to be carried by mercantile claimants.

There is no intention fully to examine these questions in this place, where it can only be done in a brief and cursory manner, but it is impossible to pass them by without at least a suggestive notice. The day is not far distant when they must receive full inquiry and decision by competent tribunals.

The right to *abandon* merchandise, more or less, but slightly damaged by fire, claiming the full cost price and leaving the Fire Offices to make what head they are able against falling markets and combined buyers, is certainly not one of the most pleasing features of our modern practice. It is quite true that there never was a time when it was not occasionally necessary to test the actual amount of damage to insured property, by a fairly conducted sale. But the principle of throwing into the hands of the Fire Offices the entire contents of large warehouses, on the plea that some part of those contents have been slightly damaged by water or by hasty and incautious removal, is most decidedly entitled to credit as a modern invention. It is not necessary to add, that this can only have been attempted when the state or course of the market made such a step advisable. It is not difficult to discern the advantages gained by the assured; but, with a fallen or falling market, the recovery on such a plea of the cost or contract price on large parcels of merchandise free from all

charges, leaving the assurers, in addition to the damage done by the fire, the loss of a failing speculation, cannot be considered by the Offices any improvement in their rules of settlement. In some recent examples of this kind the loss on the depreciated market was two or three fold, the admitted depreciation of the quality of the merchandise as a consequence of the fire.

It is quite probable that no man could be found, who would express a belief that under the ordinary conditions of our polices, the law would, in the remotest degree, sanction many of the views recently brought forward with so much confidence in argument on this point. It cannot be supposed that the indemnity against loss by fire, promised by the policy, goes one step beyond the loss by depreciation of the goods, as a result of the fire, fairly estimated. The attempt to convert the Insurance Companies into speculators in produce, with all the disadvantages of forced sales and combined buyers, was surely never suggested, much less sanctioned, by any fair legal construction of the terms of the policy. In any case, it is a risk not contemplated by the assurers, and is one for which a fitting rate of premium has yet to be inquired for and found. If the policy is not only to take the risk of damage by fire, but also the chances of falling markets and forced sales, there must be quoted a presumably adequate rate of premium by those who are willing to embark in the experimental business. It is simply the insurance of merchandise from the risks of fire—*plus* the risks and riggings of markets. Upon the supposition that the principle were to be affirmed, that in all cases, when it suited the interests of the assured, he was at liberty to *abandon* his slightly damaged or package-ruffled merchandise, at his own price, it would appear to be a branch of business altogether out of the reach of pru-

dently managed Companies, and would probably be left, at an elevated premium, to new and speculative operators, who are never so well pleased as when the hazards run high, and they play for large stakes at long odds.

Another topic in close relationship with the preceding, has lately received a large share of attention, but it must be owned, not by any means a larger share than it merits from its great practical importance: How shall the merchandise destroyed or damaged be valued? At the market price of the day, or at the contract price for which it has been sold, but, in agreement with the conditions of the sale, remaining unpaid, is not yet delivered to the purchaser? The old doctrine which wore very well in use, until a late period of our history, was doubtless the market price of the day of the fire. The theory used to be explained by the illustration, that a fire might be considered a forced sale to the Fire Offices, and they were therefore bound to pay the proper price of the day (with the usual discounts), upon their involuntary and unwelcome purchase. No questions as to original cost, and still less as to anticipated gains were asked, but merely, according to the simple manners of the times, what was the value, estimated by the market price of the day, and how much per cent., according to a fair arbitration, was the actual damage? No questions of abandonment for slight damage, nor for loss of anticipated profits, found any place in the settlement. We are indebted to modern light, and modern commercial practices, for bringing to the surface not a few novel insurance perplexities, with this among the rest, and which are not at all likely to be laid at rest in the same short space of time in which they have arisen.

The question of the *contract*, as opposed to the *market*

price, appears at first view to be really a very simple one. A merchant has sold at a given price but not yet delivered the goods, the bargain remaining open for a certain fixed time awaiting payment. Is it not right that he should recover the price which would have been paid to him had not the uncontrolable mischance of the fire interposed? What more natural or legal than that such a loss of price should be held to be a loss by fire coming under the general protection of the policy? These questions were vigorously pressed on the Fire Offices after the large wharf fire of 1861. The Companies acquiesced, and after some deliberation (it cannot be said sufficient deliberation) they declared, in March 1862, that they admitted as principles of settlement—that the market price should rule in the case of goods actually held by the assured, but in case of sale by contract while lying, in default of payment, undelivered, the contract price would be taken as the valuation.

This rule lasted in force from the year named until the present summer. After very ample experience it was found to work in a way that called for immediate change, and at a general meeting of the Offices it was unanimously decided promptly to abrogate the agreement of 1862, and revert in all cases to the market value of the day, as the highest limit of price to be paid for merchandise damaged or destroyed by fire. It will therefore, for the future, form a condition of every London mercantile policy that the estimated value to be taken in case of loss, is "in no "case to exceed the value of the goods immediately "anterior to the fire."

There remains one other point of the same kind and that will be the last. The agreement or declaration of March 1862, now altogether revoked and cancelled, in-

cluded also the offer on the part of the Offices specially to insure what were, by a strong figure of speech, called *realised profits*. That is to say—the difference in the price in the case of a rising market, between the contract price and the price for which the goods had been resold previously to the expiration of the first prompt and their delivery to the first purchaser.

The importer and owner of a cargo sells £10,000 worth to A, but before the prompt has expired, or A has paid to be in the position of a real owner, A sells to B the same goods for £11,000. B again, in like manner, sells to C for £12,000. Both A and B have clearly made a nominal profit of £1,000 each. A fire, destroying or even slightly damaging the goods sold, and thus preventing their transfer, will annihilate this anticipated profit. By the declaration of 1862 the operators in the different markets were allowed to insure these so called *realised profits*, by special policies. This branch of business, an entire novelty and invention of the day, has now, by common consent and for excellent reasons, been brought, like the contract price condition, to an end.

One peculiarity of this description of policy on *profits* is well worthy of note. In case of loss or any degree of damage to the merchandise, these policies must always bring total losses. A slight damage from water rendering the packages unmerchantable will prevent the transfer of the goods, and in the case supposed, A and B will have a claim for a total loss on their policies of £1,000 each; so that a damage to the merchandise, say of two-and-a-half per cent., would, on the policy of the original owner for £10,000, bring a loss of £250, and the profit policies of A and B for £1,000 each, would give total losses.

It would be both useless and impolitic to anticipate by

a few cursory remarks in this place, the serious practical discussions which are likely to arise on the questions just referred to. With every wish to accommodate the practice of the Insurance Companies to the wants and altered practices of the mercantile community, it is clear that it will need a very careful deliberation to organise a system which will protect the just interest of all concerned in the transaction of regular commercial business.

With reference to the kind or class of insurance just referred to, that of so-called *profits* upon the sale and resale of goods lying under prompt awaiting payment and delivery, it may be remarked that such business seems scarcely to fall under the regular notice of an Insurance Company. Such policies are not in any fair manner insurances to indemnify to the owner his loss or damage to merchandise, but belong rather to transactions which are purely engagements to cover the chances of *Wagers*, by what is known to and prohibited by the law as *Wager-policies*.* This may or may not be the case, but it is clearly not a tempting class of business to be hastily embarked in, even at high rates of premium. It seems rather to belong to the *new* than to the *old* insurance world, and might possibly be undertaken with great advantage by some of those quite modern institutions, which, with untranslatable foreign titles have lately made a shadowy and portentous appearance on the English stage. As it does not appear to be known to any one, not even to the shareholders, what class of business *Crédit* societies propose to undertake, the suggestion to them of the insurance of *profits* may prove a valuable hint, although it is by no means clear whether such risks belong to the *Mobilier* or *Foncier* department.

* *See* PARK ON MARINE INSURANCES, Chap. xiv.—*Of Wager-policies.*

It is now high time to close these remarks, which have already run to an unexpected length, and are now brought to an end with the earnest wish, that clearer information could have been given on the subject treated of, and that it had been presented in a more concentrated and attractive form.

APPENDIX.

It formed a part of the original plan of the present essay to add a chapter on the settlement of claims under *foreign* policies. The universal application of the average or *pro ratâ* condition throughout France, Belgium, Germany, and the north of Europe, has perfectly familiarised both assurers and assured with the principle, and it is not often that any grave difficulties or complications arise. A loss, large or small, happens on furniture or stock, and the whole valuation and settlement proceeds with the utmost simplicity of form. What was the fairly estimated value of the whole of the property under protection? By how much then was the assured his own assurer? What is the proportion, then, from these conditions, that each is to pay of the loss or damage? It is quite needless after all that has been written, to suggest even to the most inexperienced, how great is the advantage which this principle of settlement really affords to the Offices. What a sentiment of envy must necessarily arise, when the thought occurs to those who are called upon to settle English claims, when often with one-tenth of the value of the property insured, yet, on the occasion of a slight or partial damage, a total loss is fixed upon the policy. The painful contrast had better be

at once dismissed from the mind, as *that* evil is obviously incurable.

The settlements, however, of foreign policies do not always run perfectly smooth. Cross combinations sometimes occur which puzzle and perplex the wits of assessors of losses in all latitudes. If so much had not been already written, it would have been worth while, as a matter of scientific and professional interest, to have introduced here a few of these cases for comment. The space already occupied quite forbids the insertion of more than two of such statements as examples, and these have already appeared in the *Assurance Magazine*.

The first is in a communication from Hamburg by a well known and skilled correspondent, and deserves attention. The second is a case arising out of a loss at Copenhagen, which is stated with an accuracy of detail greatly to be admired, and the study of which may turn to profit, provided the student has a great deal of unoccupied time and unbounded zeal for instruction.

To the Editor of the Assurance Magazine.

SIR,—I have read the article in No. X. of this *Magazine*, "On the Settlement of Losses by Fire under Average Policies," by Richard Atkins, Esq., with the greatest interest; and as the author refers to the German forms of the conditions of policies, I beg leave to communicate to you a case which in some respects bears upon the question, and which gave rise to a difference of opinion amongst the managers of the German Fire Insurance Offices as to the just distribution of the claims. To facilitate the understanding of the cases, I have changed the sums in such a way that they allow simple calculation.

A merchant has taken out two policies—in Office A, £2,200, for grains, seeds, *and mats*, in a named warehouse; and in Office B, £1,800, for grains and seeds in the same warehouse. An accident happened, and it was proved that the stocks in the warehouse at the moment of the fire had been—

	£		£
Grains and seeds	4,000	Loss, valued at 25 per cent...	1,000
Mats	400	„ „ 50 „ ..	200
Grains, seeds, and mats..	£4,400	Loss, $27\frac{3}{11}$ per cent.....	£1,200

I had to make up the distribution of claims, and did it in the following way. The sums insured do not exceed the value of the stock existing at the time of the fire.

	£		£
Office A....	2,200	on grains, seeds, and mats, pays $27\frac{3}{11}$ per cent.	600
Office B....	1,800	on grains and seeds, pays 25 per cent.....	450
Uninsured..	400	loses	150
	£4,400		£1,200

The party assured did not agree with this distribution, and made up the following—

Grains and seeds—		£		£	s.	d.
Insured with Office B.....		1,800	pays 25 per cent.	450	0	0
$\frac{1}{40}$ of the sum insured.....		180	„ 25 „	45	0	0
Office A, £2,200	Proportion, £2,420 : £2,020	1,837	„ 25 „	459	0	0
$\frac{23}{40}$ uninsured, 220	Remaining sums	183	„ 25 „	46	0	0
		£4,000		£1,000	0	0
For mats—						
Office A, £2,200	Proportion,	£367	„ 50 „	£183	10	0
Uninsured 220	£2,420 : £400	33	„ 50 „	16	10	0
		£400		£200	0	0

	£	s.	d.	£	s.	d.	
That makes, for Office A	459	0	0				
	183	10	0	..642	10	0	a difference of £42. 10s.
„ „ Office B				...450	0	0	there is no difference.
Uninsured	45	0	0				
	46	0	0				
	16	10	0	107	10	0	
				£1,200	0	0	

I must note here, that the insurance which I represent as made with Office A had been made with two different Offices—the Fire Insurance Bank in Gotha, and the Assicurazioni Generali, in Trieste, for which I am acting. The policies being of the same tenor, it will not affect our judgment if we consider them both effected with Office A, thus simplifying the case; but I was obliged to mention it, for the Gotha Bank declared the distribution of the assured to be correct, and mine to be erroneous. The argument given by the Gotha Bank

is, that the sum uninsured ought to be divided among grains and seeds and mats, in proportion to the existing stock, as it is done by the assured.

My arguments for my settlement of the claims are: 1, it is quite evident that, if no other policy were existing but the £2,200 with the Office A, the loss to be paid would be £600, and I cannot find any reason in the conditions why I should be obliged to pay more through the co-existence of other policies; 2, I have insured on grain, seeds, and mats (that means, on all goods in the named warehouse) in one undivided sum; and therefore I pay in one undivided sum proportionate to the sum insured, at the ratio of the entire loss to the amount of all the goods; 3, there is no reason to divide the sum *uninsured* for grains, seeds, and mats in proportion to the existing stock, for, since there was insured with Office A £2,200 for grains, seeds, and mats, the statement would be—

	£		£
Office A—For grains and seeds	2,000	Mats.....	200
Office B— „ „	1,800	„	0
Leaving uninsured	200	„	200

I stated the case to the managers of the different German Fire Offices, and requested their opinion. I do not know whether I have permission to publish the opinions I got. Up to this moment, six Offices have agreed with me, one with the Gotha Bank and the assured, and one gives a third mode of distribution, which you will allow me to communicate.

	£	s.	d.		£	s.	d.
Office B, having assured	1,800	0	0	pays 25 per cent.	450	0	0
Office A, „ „	2,200	0	0	„ $28\frac{4}{13}$ „	634	10	0
Uninsured	400	0	0	loses $28\frac{4}{13}$ „	115	10	0
	£1,200	0	0		£1,200	0	0

In this example the differences between the three modes of distribution are of small importance; but I could easily give such numbers as would prove the divergence of the adopted principles. I mean to to say, that there exists no condition of the policy that obliges me to pay a *larger* sum, because other policies have been co-existent, than I should have paid under the same circumstanees had no other policy been taken out. And it would be very dangerous to agree to principles contrary to those which I have stated as mine: for an Office, A, having included in the policy the risk of more dangerous objects forming the contents of a large establishment, in regard that the value of these was small compared with the whole amount insured, would be considered to have *chiefly* insured these more dangerous

objects, if the other Offices insuring the same establishment had omitted these objects in their policies; for then, according to the mode of distribution adopted by my opponents, if an accident had destroyed the dangerous objects and but little injured the rest, they would make out that the loss should be paid by those Offices which did not name the dangerous objects, and would then request Office A to pay the proportionate part of the *remaining* loss to the *remaining* value.

I remember some cases of this kind which occurred here at Hamburg, and then the claims were settled according to the principle which I maintain.

I am, Sir,
Your obedient Servant,

Hamburg, 23 *April*, 1853. WILHELM LAZARUS.

To the Editor of the Assurance Magazine.

SIR,—I send enclosed the particulars of a loss which lately happened in a foreign city, and I think, from its peculiarities, it is deserving of record in your valuable *Magazine*. I wish also to invite remarks on the correctness of the settlement.

I am not sure that the Offices have *all* fulfilled the conditions of their policies, as it is questionable whether those Offices which have effected the insurance *without* the *pro ratâ* clause in their policies should not have paid the deficiency allotted to H, the assured, by those Companies which have that clause in their policies.

B's apportionment, I think, is right, so far as his own Office is concerned; and was presumed to be right in regard to the others, until it was discovered that the *pro ratâ* condition was not in every policy.

C appears to have overlooked the specific insurance on L by D.

D appears to have overlooked the fact that B's policy contained the *pro ratâ* condition.

The details of this settlement may be interesting to those who have given their attention to the settlement of losses under average policies.

I am, Sir,
Your obedient servant,
R. B. F.

Pro ratâ condition.

"When, in case of loss by fire, the insured goods are valued at more than the sum insured, and some portion of the goods are saved, the owner shall be considered as his own insurer for the excess, and shall, in consequence, bear his share of the loss *pro ratâ.*"

STATEMENT.

Office.	Insurances.	Rigsmont Dollars.	
A,	On merchandise in warehouses communicating, A to L . . .	40,000.	No *pro ratâ* condition.
B,	Ditto, ditto . . .	30,000.	With *pro ratâ* condition.
C,	Ditto, ditto . . .	38,000.	No *pro ratâ* condition.
D,	On merchandise in warehouse L .	10,000.	No *pro ratâ* condition.
	On merchandise in all other warehouses, A to K	85,000.	
E,	On sugars in all warehouses, A to L.	30,000.	With *pro ratâ* condition.
		Rd. 233,000.	

H, the assured.

The absence of the *pro ratâ* condition from the policies of Offices A, C, and D, was not known to B until after the settlement.

Total value of goods at time of fire, Rd. 233,928, 3 marks, and 2 skillings,* viz.:—

Sugars (none in L)	Rd. 138,357	3	12
Merchandise in L	6,827	2	6
Ditto, in A to K	88,743	3	0
	Rd. 233,928	3	2

Loss.

On sugars	Rd. 84,719	0	1
On merchandise in L	6,827	2	6
Ditto in A to K	49,953	3	0
	Rd. 141,499	5	7

APPORTIONMENT BY D.

Value of Sugar.	Loss on Sugar.	Insured by E.	Loss of E.
Rd. 138,357 : 3 : 12.	Rd. 84,704 : 4 : 3.†	Rd. 30,000.	Rd. 18,366 : 2 : 10.

* 16 skillings = 1 mark, 6 marks = 1 dollar.

† An unexplained discrepancy.

Loss in L.

	Insured.
	Rd. 233,000
Less E,	30,000

Insured by A, B, C.

Rd. 203,000 covers loss, Rd. 6,827 : 2 : 6. Rd. 108,000 = Rd. 3,632 : 2 : 3.

Thus—

D, for Rd.	10,000	0	0		
A,B,C,	3,632	2	3		
Rd.	13,632	2	3 covers Rd. 6,827 : 2 : 6. Rd.	10,000	0 0 pays Rd. 5,008 1 8
				3,632	2 3 pays 1,819 0 14
					Rd. 6,827 2 6

Loss in A to K.

Floating Policies in D		Rd. 85,000	0 0
A, B, C, cover . .	Rd. 108,000	0 0	
less paid . .	1,819	0 14	
		106,180	5 2
		Rd. 191,180	5 2

Total loss . .	Rd. 141,485	3 9 (discrepancy in sugar account).	
E paid .	Rd. 18,366	2 10	
Paid on L	6,827	2 6	
	25,193	5 0	
	Rd. 116,291	4 9 Thus, Rd. 85,000 loses Rd. 51,703	5 14
		And on L	5,008 1 8
		Total loss to Office D .	Rd. 56,712 1 6

APPORTIONMENT BY C.

Loss on merchandise	Rd. 56,880	58 *sk.*	discrepancy unexplained.
„ sugars	85,205	84	
	Rd. 142,086	46	

Sugars valued at Rd. 138,357 : 60; loss, Rd. 85,205 : 84; loss = $61\frac{3}{5}$ per cent.

E therefore pays Rd. 18,480—

Gross Loss	Rd. 142,086	46
E pays	18,480	0
For other Offices . .	Rd. 123,606	46

A insures	Rd. 40,000	. . . . .	Loss, Rd.	24,355 92
B „	30,000	. . . . .	„	18,266 93
C „	38,000	. . . . .	„	23,138 16
D „	95,000	. . . . .	„	57,845 37
			Rd.	123,606 46

APPORTIONMENT BY E

(of Sugar Loss), not known.

APPORTIONMENT BY B, AND ADOPTED BY A.

Loss on Goods (Sugars excepted) in all Warehouses (L *excepted*).

Whole value of goods, Rd. 233,928 : 3 : 2.

Value of goods (sugar excepted), A to K, Rd. 88,743 : 3 ; loss thereon, Rd. 49,953 : 3.

Office.	Insurance.	Rateable proportion of Insurance applicable to Warehouses A to K, on Goods (Sugar excepted).	Share of Loss on Goods (Sugar excepted) in A to K.
A	Rd. 40,000 0 0	Rd. 15,174 3 0	Rd. 10,169 3 0
B	30,000 0 0	11,381 0 0	7,627 1 4
C	38,000 0 0	14,415 4 7	9,661 0 8
H, assured ..	928 3 2	352 1 4	236 0 0
Goods in all warehouses (L excepted), Rd. 227,101 : 12.			
D	85,000 0 0	33,215 1 0	22,259 4 4
		Rd. 74,538 3 11	Rd. 49,953 3

Loss on Sugars.

Whole value of goods, Rd. 233,928 : 3 : 2.

Sugars in A to K (none in L), value Rd. 138,357 : 3 : 12; loss thereon, Rd. 84,719 : 0 : 1.

Office.	Insurance.	Rateable proportion of Insurance applicable to Sugars.	Share of Loss on Sugars.
A	Rd.40,000 0 0	Rd.23,658 0 0	Rd.13,708 1 2
B	30,000 0 0	17,743 3 0	10,281 1 0
C	38,000 0 0	22,475 0 9	13,022 4 11
H, assured ..	928 3 2	549 1 4	318 0 10
E	30,000 0 0	30,000 0 0	17,382 5 10
Goods in all warehouses (L excepted), valued at Rd. 227,101 : 12.			
D	85,000 0 0	51,784 5 0	30,005 5 0
		Rd.146,210 3 13	Rd.84,719 0 1

Loss on Goods (Sugars excepted) in L.

Whole value of goods, Rd. 233,928 : 3 : 2.

Value of goods in L, Rd. 6,827 : 2 : 6; loss thereon Rd. 6,827 : 2 : 6.

Office.	Insurance.	Rateable proportion of Insurance applicable to L.	Share of Loss in L.
A	Rd.40,000 0 0	Rd.1,167 3 0	Rd.604 4 12
B	30,000 0 0	875 3 0	453 3 9
C	38,000 0 0	1,109 1 0	574 3 3
H, assured ..	928 3 2	27 0 10	13 5 12
D	10,000 0 0	10,000 0 0	5,180 3 2
		Rd.13,179 1 10	Rd.6,827 2 6

Recapitulation of Risk.

Office.	A to K.		L.	Total.
	Goods.	Sugar.		
A	Rd.15,174 3 0	Rd.23,658 0 0	Rd.1,167 3 0	Rd. 40,000 0 0
B	11,381 0 0	17,743 3 0	875 3 0	30,000 0 0
C	14,415 4 7	22,475 0 9	1,109 1 0	38,000 0 0
D	33,215 1 0	51,784 5 0	10,000 0 0	95,000 0 0
E	..	30,000 0 0	..	30,000 0 0
H, assured	352 1 4	549 1 4	27 0 10	928 3 2
				Rd.233,928 3 2

Recapitulation of Loss.

Office.	A to K.		L.	Total.
	Goods.	Sugar.		
A	Rd.10,169 3 0	Rd.13,708 1 2	Rd.604 4 12	Rd. 24,482 2 14
B	7,627 1 4	10,281 1 0	453 3 9	18,361 5 13
C	9,661 0 8	13,022 4 11	574 3 3	23,258 2 6
D	22,259 4 4	30,005 5 0	5,180 3 2	57,446 0 6
E	..	17,382 5 10	..	17,382 5 10
H, assured	236 0 0	318 0 10	13 5 12	568 0 6
				Rd.141,499 5 7

	H has received.	H should have received.*
From A	Rd. 24,482 2 14	Rd. 24,482 2 14
„ B	18,361 5 13	18,361 5 13
„ C	23,138 1 0	23,258 2 6
„ D	56,712 1 6	57,446 0 6
„ E	17,382 5 10	17,382 5 10
	Rd. 140,077 4 11	Rd. 140,931 5 1

* It is questionable whether H should not also have received from A, C, D the difference between Rd. 140,931 : 5 : 1 and the total amount of loss, Rd. 141,499 : 5 : 7—

Say, from A	Rd. 139 2 6
„ C	132 2 9
„ D	296 1 7
	Rd. 568 0 6

Considerable additions to these cases might, as already suggested, be easily made, but it is not clear that any useful purpose would be served by printing a number of statements, tending possibly to the enlightenment of the diligent inquirer, but more certainly proving excellent exercises for the virtue of patience, a branch of moral

improvement not contemplated in the present course of instruction.

It was in the beginning of the year 1843, that a keen discussion arose on the principles of the Average Clause, particularly as applied to Liverpool business. This controversy gave birth to the innovation known as the *Independent Liability* Clause. The argument and reasons for this change have been already described in one of the preceding essays (see page 37), and now that that portion of the clause is dead and buried, no more need be added on the subject.

It may, however, be of some interest to state that during the eager inquiries which were made at that excited period, it was thought desirable to learn accurately the practice adopted in analagous cases, by the marine assurers. Some useful remarks, bearing strongly on the point, are to be found in the able work on Marine Insurance, "*Stevens' Essay on Average*," but it was decided to submit a plain and common Fire Office case to two eminent professional assessors of marine losses—or *Average Staters*, as they are technically called—for their opinion. The two gentlemen selected, Mr. William Richards and Mr. Thos. R. Davison, were known and acknowledged to be at the head of their profession, and the present occasion is taken to rescue the case submitted and the opinions given from entire oblivion. The reader will not fail to remark, that what with mixing up customs, doubtless well known and recognised in marine policies, and the adoption of a nomenclature diffierent from that in common use among Fire Offices, the opinions of these eminent men did not turn out to be of much practical service in settling the controversy. Mr. Davison was good enough to add to his opinion, a

letter containing some very good remarks upon the general question at issue, and this is also now printed as being entitled to respectful attention.

Case 1st.

A policy in the Sun Fire Office in the following terms:—

Messrs. Smith & Co. of London, Merchants.

On merchandise, their own, in trust, or on commission, in all or any warehouses, wharves, vaults, or cellars, of the West India Docks £10,000

With the average clause.

The same parties, Messrs. Smith & Co., have a policy in the Phœnix Fire Office in the following terms:—

On merchandise, their own, in trust, or on commission, in all or any of the warehouses, wharves, vaults, or cellars, of the West India and St. Katherine's Docks £10,000

With the average clause.

At the time of the fire the distribution of the property covered is as follows:—

In the West India Docks	£15,000
In the St. Katherine's Docks	5,000
	£20,000

A loss happens in the West India Docks of £6,000.

Mr. Richards' opinion is requested as to the proportion which each Office is called upon to pay?

Case 2nd.

The same policies in force and the same distribution of property exists, and a loss of £5,000 happens in the St. Katherine's Docks. What sum would the Phœnix be bound to pay under the average condition of its policy of £10,000 as stated above?

MR. RICHARDS' OPINION.

Each policy is a separate and distinct contract, and must be treated accordingly.

The policy effected with the Phœnix Fire Office is on merchandise in *two* docks.

If there were no goods in the West India Docks, but goods to the value of £10,000 in the St. Katherine's Docks, it would have full interest.

If there were no goods in the St. Katherine's Docks, but goods to the value of £10,000 in the West India Docks, it would have full interest.

If there were goods in each dock to the value of £5,000, it would have full interest.

So it must take its proportion of value in each dock according to the aggregate amount in the two;

Therefore, there being property to the value of £15,000 in the West India Docks, and of £5,000 in the St. Katherine's Docks;

The Phœnix policy will cover £7,500 in the West India Docks, and £2,500 in the St. Katherine's Docks.

Case 1.—*Loss of* £6,000 *in the West India Docks.*

The Phœnix policy covers in the West India Docks .	£7,500
The Sun policy covers	10,000

the proportion will therefore be—

For the Phœnix	£2,571 8 6
For the Sun	3,428 11 6
	£6,000 0 0

Case 2.—*Loss of* £5,000 *in the St. Katherine's Dock.*

By the mode in which the insurances are effected—one policy covers goods in one dock only, and the other covers goods in both.

Although the sum insured is equal to the full value at risk, it is clear that the property in the West India Docks is *over* insured, and that in the St. Katherine's Docks *under* insured;

So that with a loss of £5,000 in the St. Katherine's Docks, the office would be responsible only for £2,500, that being the portion of £10,000 insured, applicable to goods in the St. Katherine's Docks, in proportion to the value of the property collectively in the two docks at the time of the fire.

The remaining £2,500 is unprotected by insurance, and therefore a loss to the assured.

WILLIAM RICHARDS.

New City Chambers,
7th February, 1843.

Mr. DAVISON'S OPINION.

I consider that the case put is for my opinion of the mode in which the interests would attach, supposing they were insured by those policies, which more immediately come under my notice, and which consist of marine insurances on goods.

I do not profess to have any knowledge of rules or customs which may be peculiar to fire insurance policies.

I assume that there are no clauses in the policies before me to govern the mode of attaching the respective interests, and I am therefore of opinion that the two insurances must take interest as follows:—

Sun—Insured on goods in W. I. D.		£10,000
Phœnix—Insured in W. I. D. and S. K. D.		10,000
Insured		£20,000
Goods valued—		
W. I. D.	£15,000	
S. K. D.	5,000	
		£20,000

If £20,000 goods in W. I. D. and S. K. D. have joint insurance, £10,000 in W. I. D. and S. K. D., then—

£15,000 in W. I. D. has on that policy	£7,500
5,000 in S. K. D. ditto	2,500
	£10,000
Policy on W. I. D.	£10,000
Of £15,000 in W. I. D., the joint policy takes £7,500.	
There remains here, therefore	7,500
Over insured	£2,500
A loss having happened in W. I. D. of	£6,000
£7,500 attaching to joint policy pays	£3,000
7,500 ditto policy on W. I. D. only	3,000
	£6,000
Goods in S. K. D. valued at	£5,000
Attaching to joint policy	2,500
Not insured	£2,500

The loss being £5,000—	
The joint policy will pay	£2,500
Not insured	£2,500
Loss	£5,000

The insured, therefore, by his unfortunate mode of effecting his insurance, and not providing for one policy taking precedence of the other, is over insured by one and short insured by the other, and such, in marine insurance, is not a novel occurrence.

THO. R. DAVISON.

13, *Birchin Lane, London,*
February 8th, 1843.

13, BIRCHIN LANE,
February 14th, 1843.

RICHARD ATKINS, ESQ.

DEAR SIR,—You were anxious that Mr. Richards' opinion and mine should agree on the question submitted to us, and I assented to take his opinion to be right, supposing the policies to be taken separately, a circumstance which could not occur on a marine policy, because to make it specific, it must so appear on the face of it.

But after our last interview, when I came to consider the practice which governs fire insurance policies, and the Average Clause required to be used, it became evident that what we had written was, for your purpose, of no value whatever.

Your agreed custom of placing the first liability on a policy effected on one building or place, and your Average Clause affecting a policy on two buildings or places, added to the fact that floating fire insurances are for a period of time, and cover possibly ten times the amount insured, entirely destroy any analogy between yours and a marine policy on goods; I came to the conclusion, therefore, that all we had done for you was merely to confirm the opinion that the present system was bad.

Our practice affording you no information, I offer you some suggestions for consideration. Whatever alterations you may agree upon I assume the Offices will unite in carrying out.

What occurs to me is at present confined to the London District.

Two descriptions of floating policies only to be issued.

One to include the three docks jointly, the other the wharves, warehouses, and places within five miles of London.

No policy to include both.

No specific policy, unless where the assured confines his business to one dock or place only.

In every case where the assured has more than one insurance, he should be bound to state the amount, and where effected, and to declare that the policies are all concurrent one with the other; he must also be made aware that it is important to his own security that the terms and conditions of the policies should be the same in all.

At our conversation on Saturday, it was suggested that all the policies on docks should be specific, but I apprehend that the assured would not accede to this; the advantage of having £30,000 insured in three docks, being manifestly so preferable to having £10,000 in each, would render that impossible.

I am aware that there may be an objection to including the three docks invariably; as to one, I believe there is an objection. If this be insuperable, the two good docks may be classed together and the other separately, and, provided either that or the former plan be an *invariable* rule, no difficulty can arise.

It appears to me that there must be a great objection to having specific policies and joint policies effected by the same party, with your rule as to priority of liability, as it will give the assured an opportunity, by doing his joint policy with a favoured Office, to throw the chance of loss upon the others, by making them specific. The alterations proposed will prevent such occurrence.

The addition you propose to the Average Clause is very good if your present practice be continued; but if you alter the basis on which the insurances are effected, you will be more secure; and, with what I propose, I think the addition will be unnecessary, as the connecting of the policies will be sufficient; it will give you, also, information which may be important as a check against fraud, to which, by the present policies, the Offices are exposed.

At first, the assured will be disinclined to state the amount of his insurances, and where effected, but there can be no solid objection to it—the same occurs constantly in marine insurance, and it has never been found to be attended with any inconvenience.

The above have occurred to me, and in offering them I have to apologise for their being written hastily.

I am, dear Sir,

Your obedient servant,

THO. R. DAVISON.

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